

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 13 July 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.

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.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, J.P.

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, J.P.

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

**MEMBER ABSENT:**

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

**PUBLIC OFFICERS ATTENDING:**

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

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION

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

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

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

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

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

**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/Instruments	<i>L.N. No.</i>
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Securities and Futures (Levy) (Amendment) Order 2011 .....	115/2011
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Securities and Futures (Levy) (Amendment) Rules 2011 .....	116/2011
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Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2011 ..	117/2011
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Mandatory Provident Fund Schemes (Contributions for Casual Employees) (Amendment) Order 2011 .....	118/2011
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Other Papers

No. 104 — Clothing Industry Training Authority Annual Report 2010

No. 105 — Broadcasting Authority Annual Report 2009-2010

No. 106 — Hong Kong Trade Development Council Annual Report  
2010/11

No. 107 — The Standing Committee on Legal Education and Training  
Annual Report 2010  
1 January 2010 to 31 December 2010

No. 108 — J.E. Joseph Trust Fund  
Report of the Trustee and the signed and audited financial  
statements together with the Report of the Director of  
Audit for the period from 1 April 2010 to 31 March 2011

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- No. 109 — Kadoorie Agricultural Aid Loan Fund  
Report of the Kadoorie Agricultural Aid Loan Fund Committee and the signed and audited financial statements together with the Report of the Director of Audit for the period from 1 April 2010 to 31 March 2011
- No. 110 — Hong Kong Deposit Protection Board Annual Report 2010-2011
- No. 111 — Sir David Trench Fund for Recreation Trustee's Report 2010-2011
- No. 112 — Sir Robert Black Trust Fund  
Signed and audited financial statements together with the Auditor's report and report of the Trustee on the Administration of the Fund for the year ended 31 March 2011
- No. 113 — Hong Kong Export Credit Insurance Corporation 2010-11 Annual Report
- Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region Progress Report for the period November 2010 to June 2011
- Report No. 29/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments
- Report of the Bills Committee on University of Hong Kong (Amendment) Bill 2010
- Report of the Panel on Health Services 2010-2011
- Report of the Panel on Development 2010-2011
- Report of the Panel on Constitutional Affairs 2010-2011
- Report of the Panel on Commerce and Industry 2010-2011

Report of the Panel on Security 2010-2011

Report of the Panel on Public Service 2010-2011

Report of the Panel on Education 2010-2011

Report of the Panel on Economic Development 2010-2011

Report of the Panel on Administration of Justice and Legal Services  
2010-2011

Report of the Panel on Transport 2010-2011

Report of the Panel on Financial Affairs 2010-2011

Report of the Panel on Information Technology and Broadcasting  
2010-2011

Report of the Panel on Environmental Affairs 2010-2011

Report of the Panel on Housing 2010-2011

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Addresses. Mr TAM Yiu-chung will address the Council on the Progress Report of the Committee on Rules of Procedure for the period November 2010 to June 2011.

**Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region Progress Report for the period November 2010 to June 2011**

**MR TAM YIU-CHUNG** (in Cantonese): President, in my capacity as Chairman of the Committee on Rules of Procedure (CRoP), I table before this Council the Progress Report of the Committee on Rules of Procedure of the Legislative



Council of the Hong Kong Special Administrative Region for the period November 2010 to June 2011. I will briefly highlight here two major items of work of the CRoP.

First of all, the CRoP has reviewed the arrangements for discussing proposed amendments at the Committee stage of a Council meeting. The CRoP noted that the Committee of the whole Council would usually conduct a single discussion on a series of interdependent amendments related to a clause, a proposed new clause, a schedule or a proposed new schedule of a bill in order to save time and avoid repetition of arguments, but Rules 58(5) and (7) of the Rules of Procedure dictated the order in which clauses and schedules should be disposed of, resulting in Members or officials needing to move a motion to suspend the two rules of procedure. However, the motion to suspend a rule of procedure could be moved only after the Council had resumed and the President had given consent, then the Council again resolved itself into the Committee to debate the amendments.

After review, the CRoP consulted the House Committee and suggested at the Council meeting on 30 March 2011 that Rule 58(2) be revised to clearly stipulate that where there is a series of interdependent amendments to a bill, the Chairman may allow a single discussion in relation to those interdependent amendments and, if necessary, change the existing order of disposal of new clauses, schedules and new schedules as provided in Rules 58(5) and (7). The aforesaid amendment was passed by the Council.

Another major item of work of the CRoP was to review how to deal with repeated disorderly conduct of Members at Council and committee meetings. Starting from the current term of the Legislative Council, the CRoP has drawn reference from the practices of other countries in relation to repeated disorderly conduct of legislators at meetings.

Given the occurrence of several incidents early this year involving some Members throwing objects at public officers during Council and committee meetings, the CRoP conducted a review again at the President's request to study the regulation of display of objects by Members during Council meetings, repeated and persistent disorderly conduct of Members, and the scope of authority of the President or the chairman of a committee in executing Rules 44 and 45 of the Rules of Procedure.

The CRoP consulted all the Members in August 2010 on display of objects by Members during Council meetings. The consultation result revealed that most of the Members did not support changing the existing regulatory standards. Therefore, the CRoP decided not to follow up this matter. However, given that the situation subsequently aroused concern again, the CRoP drew reference from the relevant rules and practices of the Parliaments of the United Kingdom, Australia, New Zealand and Canada as well as the Legislative Yuan of Taiwan. The CRoP generally considered that the relevant rules and practices of the New Zealand Parliament were most valuable as reference. In the House of Representatives of the New Zealand Parliament, its Standing Order 108 stipulates that Members are permitted the use of appropriate visual aids to illustrate points made in their speeches, provided that the aids do not cause inconvenience to other Members or obstruct the proceedings of the House.

On behalf of the CRoP, I wrote to the President and suggested that he should draw reference from the principle reflected in the New Zealand standing order in the event that he needs to rule on the use of any object which may cause inconvenience to other Members or obstruct the proceedings of the Council.

As regards Members' repeated or persistent disorderly conduct at Council meetings, the CRoP has also drawn reference from the parliamentary practices in many places, and noted that the Parliaments of Germany, India and South Africa have specific mechanisms that empower the President/Speaker to immediately suspend the service of a Member for repeated breaches of order(s) at sittings up to a certain period, without the need for a motion to be passed before the suspension can take effect. However, these Parliaments also provide an appeal mechanism under which the sanction concerned can be repealed by means of a motion. After deliberations, CRoP members understood that there was no consensus view among Members on whether there was a need to change the existing practice, because the power given to the President under Rule 45(2) of the Rules of Procedure to order immediate withdrawal of a Member whose conduct is grossly disorderly was adequate to deal with the situation.

In the course of its review, the CRoP noted that the chairmen of some committees, such as panels, bills committees and subcommittees, do not have the power conferred under Rules 44 and 45 of the Rules of Procedure to make the final decision on a point of order and the power to order a Member who acts in a

disorderly manner to withdraw from the meeting. In other words, these chairmen can only persuade the Member not to continue to behave in the manner which is the subject of the controversy, and suspend the meeting to let the controversy die down, if necessary. However, the present approach can no longer ensure the smooth operation of the committees.

Therefore, the CRoP considered that, as Rules 44, 45(1) and (2) of the Rules of Procedure also apply to the chairman of any standing committee or select committee, it is indeed necessary to extend the application of these two rules to all committees of the Council. After consultation with the House Committee, the CRoP proposed to amend the relevant rules. The Legislative Council passed an amendment to Rules 44 and 45(2) of the Rules of Procedure on 11 May 2011, extending their application to all committees and subcommittees.

Following a number of incidents occurring in May and June 2011 which involved some Members behaving in a disorderly manner at Council and committee meetings, and at the President's request, the CRoP requested the Secretariat to conduct a study on the relevant rules and practices of other legislatures dealing with violent acts, in particular the throwing of objects, committed by legislators during parliament sittings or committee meetings.

In addition, the CRoP also discussed other procedures for committees, as well as the procedure for the election of the President of the Legislative Council. Regarding the procedural arrangements for the impeachment of the Chief Executive, the CRoP will continue its deliberations upon receipt of the Administration's response.

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

Thank you, President.

**PRESIDENT** (in Cantonese): Dr LEUNG Ka-lau will address the Council on the Report of the Panel on Health Services 2010-2011.

**Report of the Panel on Health Services 2010-2011**

**DR LEUNG KA-LAU** (in Cantonese): President, in my capacity as Chairman of the Panel on Health Services (the Panel), I now submit the Panel's work report for 2010-2011.

In this Legislative Session, and as of today, the Panel has held 17 meetings, met with 185 deputations and discussed 29 subjects. As the work of the Panel is detailed in the report, I will only highlight several major items of work of the Panel.

The subject of obstetric services in Hong Kong was high on the agenda of the Panel in this year. Members noted an increasing demand for public obstetric services from both local and non-local women, but there was a persistent wastage of medical staff and nursing staff of the obstetric and gynaecology specialty in public hospitals, and the bed occupancy rate of the neonatal intensive care unit of public hospitals had exceeded 100%. Members were gravely concerned about the capacity of the Hospital Authority (HA) to cope with the service demand. In response to the aforesaid concerns, the Panel passed a motion urging the Government to, apart from reserving adequate obstetric services quota for local pregnant women, give priority to women whose spouses were permanent Hong Kong residents in allocating the remaining quota, if any.

The Government assured members that priority would be accorded to local pregnant women to use obstetric services. The HA would accept booking from non-local pregnant women only when spare service capacity was available. To this end, the HA had decided that the booking for delivery in public hospitals would be closed from 8 April 2011 for non-local pregnant women if their expected delivery dates fell within April to end of December 2011 to ensure the adequate provision of obstetric services for local expectant mothers.

Members also discussed the initiatives introduced by the HA to attract and retain doctors. These included a new career structure with higher starting and maximum pay for Residents and Associate Consultants, enhanced promotion prospects and improvement of working conditions. Some members considered that the initiatives could hardly address the problems of excessive call frequency and work hours of doctors. They suggested that a cap should be imposed on the weekly work hours for doctors and more part-time private practitioners should be

recruited to help out in the pressurized out-patient clinics. Members also considered that the Administration should conduct manpower planning for doctors in each clinical specialty based on a fixed doctor-bed ratio or doctor-out-patient attendee ratio in order to better address the problem of shortfall of doctors.

In response, the HA agreed to take into account, among others, the workload of hospitals when allocating its resources to the hospital clusters in July each year. It would also adopt a bottom-up approach to solicit views from the specialty committees and front-line doctors on pressurized areas that required additional resources, so as to improve the fairness and transparency of resource allocation within the HA.

Members were gravely concerned about the high turnover rate of nurses in public hospitals. In their view, such high turnover rate had clearly demonstrated the ineffectiveness of the past measures implemented to attract and retain the nursing staff. Some members suggested that the Administration should formulate a blueprint for the long-term healthcare planning and work out a nurse-to-patient ratio in order to estimate the manpower requirement for nurses in the public sector.

The Panel also continued to follow up the HA Drug Formulary (the Formulary). Some members criticized the HA for its low transparency in its decisions on the Formulary. They urged the HA to enhance transparency in handling the Formulary, including making public the composition of the expert committees, meeting papers of the expert committees in relation to evaluating new drugs and reviewing the prevailing list of drugs, a summary of the decisions of the expert committees and the reasons for the decisions.

The HA acceded to members' request to introduce a number of measures to enhance the transparency of the Formulary and to improve the accessibility of information and communication with relevant stakeholders of the Formulary. Members welcomed this accession.

The Panel also discussed the proposal of the voluntary Health Protection Scheme (HPS) under the Healthcare Reform Second Stage Public Consultation. One of the key features of the HPS was the guaranteed acceptance of all

applicants including the high-risk groups such as the elderly and those with pre-existing medical conditions. Members considered this feature an improvement.

However, members expressed diverse views on the use of the \$50 billion fiscal reserve. Some members welcomed the proposal to make use of the \$50 billion fiscal reserve to provide financial incentives, such as offering a tax deduction for premiums, to attract people to subscribe to the HPS, but some other members considered that the \$50 billion should be used to improve public healthcare services. Some members were of the view that a public entity should be set up to offer health insurance plans under the HPS to ensure compliance with the HPS requirements, and set the benchmarks for health insurance plans under the HPS.

Members expressed grave concern about the provisions in the Chinese Medicine Ordinance which commenced operation in the end of December 2010 requiring the mandatory registration of proprietary Chinese medicines. Noting that many organizations had faced great difficulties, in terms of technical and financial viability, in meeting the requirements for the registration of proprietary Chinese medicines, members were disappointed at the lack of government support for the trade in meeting the registration requirements. Members also expressed grave concern about the lack of transparency and objectivity of the assessment criteria and procedure for the registration of proprietary Chinese medicines. They considered it high time to conduct a review on the policy regulating Chinese medicines. To enable more focused discussion, members agreed to set up a subcommittee under the Panel to study the registration of Chinese medicines. The subcommittee was activated in June 2011.

Finally, I would like to take this opportunity to thank members for their support for the work of the Panel. President, I so submit.

**PRESIDENT** (in Cantonese): Prof Patrick LAU will address the Council on the report of the Panel on Development 2010-2011.

**Report of the Panel on Development 2010-2011**

**PROF PATRICK LAU** (in Cantonese): President, in my capacity as Chairman of the Panel on Development (the Panel), I now submit the Panel's work report for 2010-2011. In the following, I will give a brief account of several major items of work of the Panel.

In this Session, the Panel continued to follow up the work of the Urban Renewal Authority (URA). The Panel discussed a number of times with the Government on the draft Urban Renewal Strategy (URS), and convened a special meeting to receive views from deputations. Members and deputations put forward a number of views and suggestions, including that the URA should enhance its role and conduct more local consultations. Regular reviews on the URS should also be conducted.

Building safety was a major concern of the Panel. The Panel discussed with the Government on tackling the problem of unauthorized building works (UBWs) and adopting measures to strengthen law enforcement. Members urged the Government to take enforcement actions in a fair, orderly and progressive manner, and provide appropriate rehousing arrangements to affected residents. The Subcommittee on Building Safety and Related Issues under the Panel also discussed with the Government on multi-pronged measures to enhance building safety.

As for the heritage conservation work, apart from hearing regular reports from the Government, the Panel also gave views and suggestions on a number of heritage conservation and revitalization initiatives, including the revitalization of Haw Par Mansion and the former Police Married Quarters on Hollywood Road. Regarding the proposal to redevelop the West Wing, Central Government Offices, the Panel held meetings with deputations to receive their views on the redevelopment scheme.

In respect of the efforts to foster a quality and sustainable built environment, the Panel welcomed the Government's new measures to promote sustainable building design and energy efficiency of buildings, as well as its move to tighten the policy on gross floor area concessions. The Panel urged the Administration to discharge its duties in a professional and fair manner in scrutinizing building plans. Developers should also enhance provision of

information to property buyers on gross floor area concessions granted to developments so as to prevent them from profiteering from "inflated buildings".

Concerning the increase of land supply, the Panel generally supported the Administration's effort in conducting studies and public consultation on reclamation outside the Victoria Harbour and rock cavern development. Given the controversies involved, members stressed the need for the Government to conduct in-depth consultation with the public on the related issues, and suggested that an action plan should be formulated for the provision of land to serve as the blueprint for land development. As for infrastructure, the Panel continued to monitor the progress of the Kai Tak Development. The Panel also supported the following projects: Review studies on the Hung Shui Kiu new development area, detailed design and geotechnical investigation works for the development of the Liantang/Heung Yuen Wai Boundary Control Point, the planning and engineering study on the remaining development in Tung Chung, and so on.

As the Panel's work in other areas are detailed in the report, I am not going to elaborate on it here.

I so submit.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung will address the Council on the report of the Panel on Constitutional Affairs 2010-2011.

### **Report of the Panel on Constitutional Affairs 2010-2011**

**MR TAM YIU-CHUNG** (in Cantonese): President, in my capacity as Chairman of the Panel on Constitutional Affairs (the Panel), I would like to highlight the deliberations of the Panel during the current Legislative Session concerning the constitutional development, electoral matters and personal data protection.

Following the passage by this Council of the motions put forth by the HKSAR Government concerning the amendments to the methods for selecting the Chief Executive and for forming the Legislative Council in 2012 (the two electoral methods), the Panel held a special meeting to discuss the Administration's proposed arrangements under local legislation to implement the



two electoral methods. Members expressed different views on the nomination thresholds for Chief Executive candidature and the new District Council (DC) (second) Functional Constituency in 2012, the electoral system of Election Committee (EC) subsectors and the composition of the EC.

President, the DC election, the EC subsector election, the Chief Executive election and the Legislative Council election would be held in November and December 2011, and March and September 2012 respectively. The Panel has been closely monitoring the preparation work of the Administration for these four elections.

The Panel held discussions on the review on the subsidy rate of the financial assistance for candidates and the election expenses limit for the DC election, as well as the review of election expenses limits for the EC subsector elections and the Chief Executive election.

The Administration also gauged the Panel's views on the practical arrangements, legislation and staffing proposal for these four elections. The Panel was briefed on the main features of the 2011 voter registration campaign and the proposed publicity programme for the 2011 DC election.

The Registration and Electoral Office (REO) briefed the Panel on the key electoral arrangements proposed by the Electoral Affairs Commission (EAC) for the 2011 DC election and consulted members on the Proposed Guidelines on Election-related Activities in respect of the DC Election issued by the EAC.

Members had diverse views about whether the polling hours for the 2011 DC election should be reduced. While some members considered that the polling hours should be shortened so as to save staffing resources, some other members expressed concern that the shortening of the polling hours would reduce the voters' turnout rate as many workers had to work very long hours even on Sundays. The Administration advised that it would listen to the views of Members and political parties in reviewing whether the polling hours should be slightly revised.

As regards the EAC's proposal to extend the "equal time" principle to the broadcast of election-related programmes on the Internet, members considered that it would impose restrictions on discussions or broadcasting activities on the Internet. Given the extensive use of online broadcast and the popularity of

uploading videos onto social networking or communication websites, members in general considered that it would not be feasible to comply with the proposed guidelines. The EAC subsequently decided not to implement the proposal.

President, regarding the review of the Personal Data (Privacy) Ordinance (PDPO), the Panel held a number of meetings to discuss the legislative proposals with the Administration and the Privacy Commissioner for Personal Data (the Privacy Commissioner). The Panel also held a special meeting to receive views from the public on the proposals.

Some members considered that the Privacy Commissioner was not granted adequate power to enhance protection of personal data in the light of serious contraventions of the PDPO in recent years. They expressed concern that the Administration did not propose to grant criminal investigation and prosecution power to the Privacy Commissioner. Some other members, however, were of the view that vesting enforcement, criminal investigation and prosecution powers in a single body was against the principle of natural justice and might lead to inadequate checks and balances.

Some members strongly supported the Administration's proposal to adopt an "opt-out" mechanism for collection and use of personal data. They pointed out that the Administration had already proposed to introduce additional specific requirements to strengthen the regulation over the collection and use of personal data in direct marketing as well as the sale of personal data. The adoption of an "opt-out" mechanism could also facilitate business development.

Some other members, however, took the view that adopting an "opt-out" mechanism did not afford adequate safeguards to personal data as explicit consent of consumers was not required. The Administration emphasized that an "opt-out" mechanism could strike a balance between safeguarding the personal data privacy of the public and facilitating business operations.

Some members requested the Administration to bring into operation section 33 of the PDPO, the only provision which had not commenced operation, as soon as practicable to prohibit the transfer of data by data users to another territory where comparable privacy protection was lacking. Some other members, however, took the view that it would not be practical and feasible to

regulate data processing outside Hong Kong having regard to the prevalence of cross-boundary data transfer activities in recent years.

The Administration explained that as implementing section 33 would have significant implications on data transfer activities of various sectors of the community, the Administration needed to consult stakeholders to assess the readiness of the community for the operation of section 33.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr WONG Ting-kwong will address the Council on the report of the Panel on Commerce and Industry 2010-2011.

### **Report of the Panel on Commerce and Industry 2010-2011**

**MR WONG TING-KWONG** (in Cantonese): President, in my capacity as Chairman of the Panel on Commerce and Industry (the Panel), I now submit the Panel's work report for the current Session and briefly highlight several major items of work of the Panel.

Concerned about the impact of the earthquake and radiation leakage in Japan on the small and medium enterprises (SMEs) in Hong Kong, the Panel urged the Administration to provide relief measures to the SMEs. After consultation with the Administration, the Hong Kong Mortgage Corporation announced on 30 May 2011 the introduction of a special arrangement under the SME Financing Guarantee Scheme to help local enterprises which were adversely affected by the crisis in Japan.

The Panel welcomed this arrangement and supported the Administration's proposal to increase the financial commitment of the SME Export Marketing Fund and the SME Development Fund by \$1 billion, and the guarantee commitment of the SME Loan Guarantee Scheme by \$10 billion in the current financial year, in order to maintain the support for SMEs.

The Panel discussed the latest development of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). Panel members

welcomed the new measures related to testing and certification under CEPA, considering that the measures can afford relevant Hong Kong enterprises more opportunities to provide testing services, thereby promoting trade between the two places. Members also urged the Administration to step up efforts in attracting talents, so as to enhance the skills and professionalism of practitioners in the industry, thus boosting competitiveness in the region.

In addition, members held the view that the SAR Government and the Mainland authorities should adopt further liberalization measures after the implementation of the Supplement VII to CEPA. Members also urged the SAR Government to proactively liaise with the Central Government ministries for the implementation of the Outline of the Twelfth Five-Year Plan for National Economic and Social Development of the People's Republic of China, including the gradual extension of CEPA measures to other regions.

Regarding the Hong Kong/Shenzhen Co-operation Meeting, members opined that Hong Kong enterprises should make the best use of the opportunities brought about by the mutual co-operation in modern service industries in Qianhai, and urged the Administration to assist high-tech enterprises in Shenzhen to set up their operations in Hong Kong, thereby promoting technological developments and improving Hong Kong's economy in the long run.

As for the promotion of inward investment, members considered it necessary to attract investment in Hong Kong by large flagship companies in the IT sector, including software development, cloud computing and the development of data centres. Members also suggested that projects such as the development of green technology and exploration of eco-technology should be promoted overseas.

Concerning the development of the exhibition industry in Hong Kong, the Panel urged the Hong Kong Trade Development Council and the Asia World-Expo (AWE) to strengthen co-operation under the "one show, two venues" approach, and requested the Administration to submit a report after evaluating the relevant cost-effectiveness. The Panel will follow up and in the future gauge views from the relevant stakeholders on the co-operation between the Hong Kong Convention and Exhibition Centre and the AWE.

With respect to industrial development, the Panel opined that the Administration should set up the fourth Industrial Estate to facilitate structural transformation of the economy of Hong Kong and development of the six priority industries, thereby creating more job opportunities.

On the innovation and technology front, members generally supported the improvement measures to refine the Innovation and Technology Fund (ITF) and called for speeding up the ITF funding process. Some members were of the view that the ITF should benefit more local university graduates, so as to nurture a new generation of innovators for the future economic and social development.

Some members called on the reduction of operating costs of the R&D Centres through centralizing the supporting services. Some members considered that resources should be focused on the Nano and Advanced Materials Institute and the Applied Science and Technology Research Institute to speed up commercialization.

Members also suggested that the Administration should further promote the use of innovation and technology in government departments/bureaux, and also in the commercial sector. Members generally supported the funding arrangements to provide a stable source of funding to Partner State Key Laboratories.

As regards the future direction of the Hong Kong Jockey Club Institute of Chinese Medicine (HKJCICM), the Panel gauged the views of relevant stakeholders in the Chinese medicine sector. The Panel noted that the majority of the deputations raised objection to the disbandment of the HKJCICM as it would hinder the development of Chinese medicine in Hong Kong. Members expressed reservation about the disbandment of the HKJCICM and the proposed setting-up of a new Government-led committee, and passed a motion to urge the Administration to review the future of the HKJCICM at a later time.

I would like to take this opportunity to thank members for their support for the work of the Panel and the Legislative Council Secretariat for their assistance.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr James TO will address the Council on the report of the Panel on Securities 2010-2011.

### **Report of the Panel on Security 2010-2011**

**MR JAMES TO** (in Cantonese): President, in my capacity as Chairman of the Panel on Security, I report on the work of the Panel on Security during the 2010-2011 Session of the Legislative Council.

As of today, the Panel has held 18 meetings during the current Session of the Legislative Council. As the work of the Panel has been set out in detail in the Report of the Panel, I will only highlight the work of the Panel in a number of areas.

Arising from the event which occurred at the Daya Bay Nuclear Power Station (DBNPS) on 23 October 2010 and the Fukushima nuclear plant incident in Japan in March 2011, the Panel discussed the Daya Bay Nuclear Power Station Notification Mechanism and the government contingency measures in relation to the Fukushima nuclear plant incident.

Some members thought that the relevant authorities of the Mainland should notify the Hong Kong Special Administrative Region (SAR) Government of all nuclear incidents in the power stations regardless of their severity.

The Administration informed members later that in order to further enhance the transparency of the operation of the nuclear power station, the Daya Bay Nuclear Power Operations and Management Company Limited would notify the Hong Kong Nuclear Investment Company Limited (HKNIC) within two working days of any non-emergency event at the DBNPS once it was discovered and confirmed. After confirming the information upon thorough investigations, the HKNIC would disclose supplementary information, including the process of the event, actual impact and follow-up actions, through its website as soon as possible.

Some members considered that the notification time limit should be further shortened from two working days to 48 hours to minimize any possible delay because of non-working days. Members noted that the HKSAR Government

had been discussing the enhancement proposals put forward by Members with the China Guangdong Nuclear Power Holding Company Limited, which was actively examining the feasibility.

Members were also concerned that comprehensive tests on the Daya Bay Contingency Plan had not been conducted since February 2001 and the next comprehensive test was scheduled to be held in 2012. Members considered that the next comprehensive test should be advanced to 2011.

On school drug testing, members were very much concerned about the results of the Trial Scheme on School Drug Testing in the Tai Po District and the way forward. Members noted that the Scheme would be continued in the 2010-2011 school year. There were concerns that the Administration had not given sufficient weight to the prevention of drug abuse at home notwithstanding the recommendations of the Task Force on Youth Drug Abuse.

According to the Administration, a number of briefing sessions had been organized for parents to facilitate their understanding of the purposes of the Scheme. Assistance and advice had also been provided to parents through principals, teachers and social workers. Through the Scheme, the communication between schools and parents had increased, thereby fostering closer home-school co-operation.

On the police's handling of public meetings and public processions and prosecution of assault on police officers, members were gravely concerned about the criteria adopted by the police in the imposition of restrictions on demonstration objects and use of pepper spray against demonstrators.

Members were concerned about the prosecution policy in respect of cases of assault on police officers. They were concerned that prosecution was instituted under section 63 of the Police Force Ordinance in some cases and section 36(b) of the Offences Against the Person Ordinance in other cases.

Members noted that the police had issued internal guidelines in August 2010 which required all front-line officers to seek legal advice from the Department of Justice if they intended to proceed with a charge pursuant to section 36(b) of the Offences against the Person Ordinance.

The Panel continued to monitor interception of communications and surveillance in this Legislative Session and discussed the results of the Administration's study of matters raised in the Annual Report 2009 of the Commissioner on Interception of Communications and Surveillance to the Chief Executive.

Members were very much concerned about the legislative proposals made by the Administration to amend the Interception of Communications and Surveillance Ordinance and the review of intelligence management in the law-enforcement agencies. The Administration is consulting the major stakeholders including the legal profession, legal academics, reporters' associations and the Privacy Commissioner for Personal Data on the amendment proposals.

In addition, members were seriously concerned about the follow-up work on the tragic incident involving a 21-member Hong Kong tour group to Manila. Members were greatly distressed that eight Hong Kong residents were killed and seven injured in the incident. Members considered that the Philippine Government had moral as well as legal responsibilities to offer the injured and the family members of the deceased a sincere apology and reasonable compensation.

Members noted that the police of the HKSAR had submitted a report on its investigation into the incident to the Coroner on 5 November 2010. The Coroner determined on 30 November 2010 that a death inquest into the incident should be conducted. The Coroner issued summons to 116 Philippine witnesses.

Members were gravely concerned about the large number of Philippine witnesses who decided not to testify in the inquest. They called on the Administration to seek the assistance of the Central Authorities to urge the Philippine Government to take all necessary actions to arrange for the Philippine witnesses to testify in the inquest.

Members noted that eventually, 10 witnesses in the Philippines had testified in the death inquest through video link. The inquest was completed on 23 March 2011 and concluded that the eight Hong Kong residents were unlawfully killed.

On the torture claim screening system, members discussed the existing administrative scheme in respect of the screening mechanism for torture claims



and the Administration's legislative proposals. Members noted that the Administration will introduce the Immigration (Amendment) Bill 2011 in the last meeting of this Legislative Session, that is, today.

Lastly, I wish to make use of this opportunity to thank Members and the Legislative Council Secretariat for their support for the work of the Panel during the past year.

**PRESIDENT** (in Cantonese): Mrs Regina IP will address the Council on the Report of the Panel on Public Service 2010-2011.

### **Report of the Panel on Public Service 2010-2011**

**MRS REGINA IP** (in Cantonese): President, in my capacity as Chairman of the Panel on Public Service, I now submit the Report on the work of the Panel for this year. I will also highlight a number of important areas of work of the Panel.

During this Legislative Session, the Panel has been closely following up the employment situation of non-civil service contract (NCSC) staff. The Panel noted that at present there are some 15 000 NCSC staff employed in the Government and some 4 000 have been employed for more than five years. Some members considered that these NCSC staff with a length of continuous service of five years or more should be converted to civil servants in order to keep up the staff morale and consideration should be given to granting these NCSC staff incremental credits according to their relevant working experience. The Panel noted that there were about 2 200 agency workers employed in the Government. The salary of such staff was generally low and there were no fringe benefits. In view of this, the Administration advised that relevant guidelines were devised and measures adopted to enhance the relevant arrangements to safeguard the wage level of the agency workers and ensure that practices regarding the employment of agency workers by various departments were similar.

The Panel discussed the findings of the latest review conducted by the Efficiency Unit on outsourcing activities across the Government. Some

members considered that outsourcing of government services would aggravate labour exploitation and affect the quality of outsourced services. Members also put forward their views on the design of the outsourcing surveys and the related arrangements.

With respect to the employment of civil servants, the Panel was concerned about the assistance available to persons with disabilities who applied for vacancies in the Civil Service. Members noted that the number of civil servants with disabilities had remained at around 2% of the strength of the Civil Service over the years and the number was about 3 300. The Panel considered that the Government should take the lead in employing persons with disabilities. Some members suggested that consideration should be given to setting a benchmark target for employing persons with disabilities in each bureau/department (say, 2% of their respective number of posts) as this would help encourage the private sector to follow suit. About the survey on the racial profile of the Civil Service, some Members requested the Administration to exercise flexibility as far as practicable in the Chinese language proficiency requirements, particularly in written Chinese, for appointments to civil service posts with a view to fostering racial harmony.

On the updated position of the provision of medical and dental benefits to civil servants and eligible persons, members were disappointed to note that the Administration did not include Chinese medicine within the scope of civil service medical benefits. The Administration pledged that it would consider the inclusion of Chinese medicine in the scope of civil service medical benefits according to the nature and mode of service delivery of Chinese medicine clinics.

The Panel was concerned about the Civil Service Bureau's decision to discontinue the Private Solicitors Scheme previously run by the Food and Environmental Hygiene Department. Members considered that the relevant staff associations' request for resumption of the provision of the Scheme reasonable. And as the Scheme had been in operation for over 20 years, it should be regarded as part and parcel of the employment terms of the staff concerned. The Panel therefore urged the Government to resume the Scheme.

With respect to the 2010-2011 civil service pay adjustment, members were particularly concerned about the pay adjustment for NCSC staff and the subvented sector staff. They urged the Administration to pay close attention to

the pay increases granted to such staff for 2011-2012 and to offer assistance as when necessary.

On the concern expressed by government school teachers about salary differences, some members considered that this had given rise to grievances in the teaching profession. The Panel passed a motion to urge the Administration to review afresh the salaries and terms of employment of government school teachers and make compensation for their loss of income arising from previous mistakes.

The Panel was briefed by the Administration on the disciplinary punishments imposed on civil servants. The Panel was very concerned about the control regime for post-service outside work for directorate civil servants.

Following the publication of the report of the Committee on Review of Post-service Outside Work for Directorate Civil Servants in July 2009, the Administration conducted consultation with relevant persons. The Panel noted that the Administration would obtain legal advice on the Review Committee's recommendations before formulating its stance for the consideration and decision of the Chief Executive in Council.

In December 2010, the report of the Legislative Council Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man was published. The report also recommended modifications to the existing control regime governing the taking up of post-service outside work by directorate civil servants. The Panel urged the Administration to come up with its view on whether the control regime would be tightened up. The Administration explained that the Civil Service Bureau was carefully studying all these recommendations, their legal implications and the views of various stakeholders. At the request of the Panel, the Administration will provide a paper on the updated developments to the Panel before the end of the current Legislative Session. The Panel plans to hold a special meeting in July 2011 to discuss the paper.

President, a full account on the work of the Panel is given in the written Report. I so submit.

**PRESIDENT** (in Cantonese): Ms Starry LEE will address the Council on the Report of the Panel on Education 2010-2011.

### **Report of the Panel on Education 2010-2011**

**MS STARRY LEE** (in Cantonese): President, in my capacity as Chairman of the Panel on Education (the Panel), I report the Panel's work during the 2010-2011 Legislative Session.

During the current Legislative Session, as at today, the Panel has held a total of 16 meetings, including one joint Panel meeting with the Panel on Home Affairs. It also conducted a visit to The Hong Kong Polytechnic University. Since the work of the Panel is already set out in detail in the report, I will only focus on the work of the Panel in several aspects.

The first subject is pre-primary education. The Panel discussed at two of its meetings the report by the Working Group set up under the Education Commission on review of the Pre-primary Education Voucher Scheme and listened to the views of the stakeholders concerned. The Panel was pleased to note that the Administration had taken on board the requests of members and stakeholders for calculation of fee remission after deducting the voucher subsidy and the removal of the social needs assessment for applications for fee remission for attending whole-day kindergartens (KGs). However, members were concerned that the proposal raised by the Administration had not addressed such issues as subsidy for whole-day KGs and the salary scale for KG teachers. Members were concerned that the turnover rate of teachers in whole-day KGs was high. Hence, they urged the Administration to increase the subsidies for whole-day KGs and introduce a salary scale for KG teachers to maintain a stable and quality pre-primary education workforce. Members also urged the Administration to expeditiously conduct a comprehensive review of pre-primary education with a view to implementing 15-year free education. At members' request, the Administration undertook to provide on a regular basis information on the salaries and turnover rate of teachers in KGs to facilitate the Panel's follow-up.

Furthermore, members examined a number of initiatives announced in the Budget for providing greater financial support for needy students, which included relaxing the income ceiling for full assistance under the existing means test

mechanism of the Students Financial Assistance Agency (SFAA); extending the Examination Fee Remission Scheme to cover students eligible for half level of assistance and students sitting for the same examination for the second time; and the After-school Learning Support Partnership Pilot Scheme. Members welcomed the relevant proposals but raised a number of concerns and proposed improvements.

In the area of financial assistance schemes for students, members were concerned that the increase in household income of some families following the implementation of the statutory minimum wage (SMW) and the Work Incentive Transport Subsidy (WITS) Scheme would render the students ineligible for assistance. Members were informed that for the purpose of conducting the income test, the SFAA would exclude the subsidies received by family member(s) under the WITS Scheme. The Panel requested the Administration to conduct a review of the income ceiling of the financial assistance schemes within a reasonable period after the implementation of the SMW and report on the outcome of the review to the Panel.

As for the development of higher education, Members expressed great concern about the Report on the Higher Education Review published by the University Grants Committee (UGC) in December 2010. Members exchanged views with the UGC on the major recommendations in the Report and received views from representatives of the management, staff associations and students' unions of post-secondary institutions on the Report. Members expressed particular concern about the Administration's plan for a further expansion of the self-financing degree sector. Members cautioned against the same mistakes being made as in the case of the expansion of the self-financing sub-degree sector including over-supply of and inadequate quality control over sub-degree programmes. Members requested the Administration and the UGC to take proactive measures to regulate the supply of self-financing degree programmes. Members also raised concern about that the proposed allocation of research funding for the UGC-funded institutions would drive institutions even further to chase after research funding and to place less focus on teaching. Having regard to the significant implications of the recommendations in the Report on the development of the higher education sector, the Panel stressed the need for the Administration to fully consult all stakeholders and requested the Administration to report to the Panel on its consideration of the Report by the end of this year.

Lastly, I would like to raise the issue of prices of school textbooks. The Panel has been following up closely the implementation of the policy of debundling of textbooks from teaching/learning resources for pricing (debundling policy). Members noted that with the implementation of the debundling policy, schools would no longer be provided with teaching materials by publishers free of charge. At members' request, the Administration undertook to provide schools with additional resources for the purchase of teaching materials if necessary. In addition to the implementation of the debundling policy, members made a number of recommendations to the Administration to tackle the problem of increasing textbook prices, which included simplifying the vetting and approval procedure for textbooks to introduce more competition to the market and including textbook price as one of the criteria in the vetting and approval of textbooks.

Members raised great concern about a further delay in the implementation of the debundling policy. The Administration indicated that if the publishers refused to debundle their teaching materials after the next school year, the Education Bureau would tender out the development of textbooks and teaching materials. Some members expressed reservations for fear that the Administration's tendering proposal would affect the quality of textbooks, thus resulting in a lack of diversity in the textbook market. For the purposes of environmental protection and lowering textbook prices, members expressed strong support for promoting initiatives on textbook recycling. The Panel will continue to closely monitor the issue of prices of school textbooks and the implementation of the debundling policy.

Lastly, I would like to take this opportunity to thank members for their support for the work of the Panel over the past year.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr Jeffrey LAM will address the Council on the "Report of the Panel on Economic Development 2010-2011".

**Report of the Panel on Economic Development 2010-2011**

**MR JEFFREY LAM** (in Cantonese): President, in my capacity as Chairman of the Panel on Economic Development (the Panel), I submit the report on the work of the Panel for the current Session and briefly highlight several major items of work in the report.

The Panel has been very concerned about the operation and regulation of the tourism sector in Hong Kong and, over the past several years, exchanging views with the Administration on the role and functions of the Travel Industry Council of Hong Kong. Having regard to a few incidents involving unscrupulous practices of the tourism trade relating to Mainland tour groups, the Chief Executive stated in his 2010-2011 Policy Address that the Government would review the operation and regulatory framework of the entire tourism sector. In a consultation paper published in April 2011, the Government set out four reform options and sought public's views on the feasibility of introducing a tourist guide licensing system and introducing different licences regulating outbound and inbound tourism. Some members supported the establishment of an independent statutory body but expressed concern about whether the body to be established could work directly with the Mainland tourism authorities in respect of the operation of the Mainland inbound group tours in Hong Kong. The Panel urged the Administration to demonstrate its commitment to reforming the regulatory regime, to effectively tackle the malpractices of coerced shopping and provide adequate protection for tourist guides and tour escorts.

During its annual briefings, the Hong Kong Tourism Board (HKTb) indicated that it would increase investment in non-Southern China regions, tap new markets and organize more diversified major events throughout 2011-2012. Some members urged the HKTb to host more appealing events during the non-peak seasons and utilize more of the Internet services to promote Hong Kong to draw more visitors.

As regards the latest work progress of the Hong Kong Disneyland (Disneyland) plan, the Panel noted that the Disneyland had a net loss of \$718 million in 2009-2010. The Panel urged the Park management to strive to boost park attendance in order to turn the Disneyland operation into a profit. The Administration advised that the Disneyland's expansion works had proceeded as planned and was expected to be completed in phases by mid-2014 to draw

more visitors. The Disneyland would also continue with its marketing and promotion activities to drive attendance.

As for the leasing arrangements for the new cruise terminal at Kai Tak, the Panel noted that the terminal operator would pay the Government a fixed rent that was expected to escalate by year, and a variable rent based on a sliding scale linked to the operator's gross receipt. Some Panel members considered the leasing terms very stringent if the berthing fees were capped. Members urged the Administration to ensure a high competitiveness of the new cruise terminal.

As for the consultation document on the legislative proposals for consumer protection, the Panel met with relevant groups and was briefed by the Administration on the outcome of the consultation. Some members expressed reservations about the Administration's proposal of extending the application of the Trade Descriptions Ordinance (Cap. 362) to cover consumer transactions involving services. They also considered that the implementation of cooling-off arrangement would result in the trade encountering cash flow problems. They urged the Administration to strike a balance in tackling dishonest trade practices and preserving operational efficiency for businesses.

The Panel generally welcomed the Administration's proposal to improve the existing Pyramid Selling Prohibition Ordinance (Cap. 355) to re-define pyramid schemes. The Panel called on the Administration to step up publicity and education to help the public differentiate legitimate marketing schemes from illicit pyramid schemes and unfair trade practices.

The Panel expressed grave concern that the two power companies raised electricity tariff simultaneously by 2.8% in 2011, since this would aggravate the inflation and add burden to the low-income groups. The Panel urged the Government to request the two power companies to freeze electricity tariff by using the reserve in the Tariff Stabilization Fund to offset the fuel cost increase, or opting not to achieve a maximum rate of return.

The Administration and the Airport Authority Hong Kong briefed the Panel on the Hong Kong International Airport (HKIA) Master Plan 2030. Members in general considered the building of a third runway conducive to maintaining Hong Kong's competitiveness in aviation, tourism, logistics and related sectors, particularly in view of the fact that new runways would continue to be built in



airports in the Pearl River Delta Region. However, some members expressed concern about the huge construction cost and its impact on the future airport charges which might undermine the competitiveness of Hong Kong's aviation industry. Hence, the Panel proposed that a shorter runway be built to economize on the cost. Some members were concerned that, apart from giving consideration to the needs of economic development, it was necessary to assess and minimize the cumulative environmental impacts during the construction of the third runway. The Panel would receive views later from the aviation industry and stakeholders concerned on the HKIA Master Plan 2030.

President, the other major items of work of the Panel are already set out in the report. I would also like to take this opportunity to thank members of the Panel for their support over the past year and thank the staff of the Legislative Council Secretariat for their hard work. Thank you.

**PRESIDENT** (in Cantonese): Dr Margaret NG will address the Council on the "Report of the Panel on Administration of Justice and Legal Services 2010-2011".

### **Report of the Panel on Administration of Justice and Legal Services 2010-2011**

**DR MARGARET NG:** President, in my capacity as the Chairman of the Panel on Administration of Justice and Legal Services (the Panel), I briefly report on the major work of the Panel in the 2010-2011 Session.

Legal aid continued to be a major focus of the work of the Panel. The Panel monitored closely the progress of the Administration in implementing its recommendations arising from the recent five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants. At the Panel's request, the Administration further increased the financial eligibility limit for the Supplementary Legal Aid Scheme (SLAS) from \$488,400 to \$1.3 million and revised some of its improvement measures, so that more people especially those from the middle class and those who had reached their retirement age would benefit under the existing legal aid schemes.

The Panel had always held the view that the scope of the SLAS should be expanded to cover more types of cases. Members welcomed the Administration's decision to inject \$100 million into the SLAS fund to support the expansion of the SLAS. Members also welcomed the Administration's proposals to include under the SLAS more professional negligence claims, claims arising from the sale of insurance products, claims against developers in the sale of first-hand residential properties, as well as employees' claims on appeal from the Labour Tribunal regardless of the amount of the claim. They, however, considered the scope and the pace of the expansion too conservative. Members also expressed concern that some applicants had to turn down the grant of legal aid because they could not afford the cost involved, particularly the contribution payment. After consideration of members' views, the Administration revised the application fee and the rates of contribution for the new types of cases to be covered under the expanded SLAS.

The Administration planned to introduce the relevant legislative proposals into this Council in the second half of 2011. In the next Legislative Session, the Panel would monitor closely the work of the Administration in taking forward the legislative proposals. The Panel would also follow up on other proposals which were not supported by the Administration, in particular the proposed inclusion of claims against property developers by minority owners regarding compulsory sales of property and claims against sale of goods and provision of services under the SLAS.

The Administration briefed the Panel on the progress in enhancing the supporting services for volunteer lawyers under the Free Legal Advice Scheme and the implementation of a two-year pilot scheme to assist unrepresented litigants who had commenced legal proceedings in the District Council (I think it should be the District Court), High Court and Court of Appeal. In view of the increasing number of unrepresented litigants, some members considered that the scope of service should be further enhanced to cover more case specific advice. They also suggested that the Administration should review the operation and effectiveness of the Free Legal Advice Scheme. The Panel will hold a special meeting this month to further discuss the issues with relevant parties.

On criminal legal aid, the Panel was generally in support of the Administration's proposal for revising the fee structure and the fees payable to assigned solicitors handling criminal legal aid cases, although some members

shared the view of The Law Society of Hong Kong that the revised fee rates were still inadequate. The Administration assured the Panel that the revised fee structure would be reviewed after two years of implementation. The Panel requested the Administration to expedite the legislative process.

The Panel continued to follow up with the Administration on the progress to implement the recommendations in the Report published in 2010 by the Working Group on Mediation chaired by the Secretary for Justice. Members noted that the Administration would concentrate its work in the coming two years on developing the system of accrediting mediators and taking forward various public education and publicity initiatives. The Administration would also brief the Panel on the draft Mediation Bill at the special meeting to be held later this month.

Arising from the discussion in the community about the importance of an independent Director of Public Prosecutions (DPP), the Panel held a discussion with the Secretary for Justice, the newly appointed DPP, the former DPP, the Chairman of the Hong Kong Bar Association, the Chairman of the Basic Law Institute and a legal academic on the subject. The Administration also gave a briefing to the Panel on the prosecution policy and practice. It was the Administration's position that Article 63 of the Basic Law provided that the Department of Justice (DoJ) should control criminal prosecutions, free from any interference. As head of the DoJ, the Secretary for Justice could not abdicate from his constitutional duty by transferring all his prosecution responsibilities to the DPP.

Some members expressed concern that the existing arrangement of having the Secretary for Justice, a political appointee, to control prosecutions would undermine the public perception of prosecutorial independence. Some members, however, took the view that the control of prosecutions should continue to rest with the Secretary for Justice as he had the constitutional responsibility to control criminal prosecutions. Members noted that a protocol between the Attorney General and the prosecuting departments was drawn up in the United Kingdom which set out how they exercised their functions in relation to each other. The Panel suggested that the Administration should consider whether a similar protocol should be adopted. Members would follow up on this issue with the Administration.

Members expressed concern about the manpower situation of the Judiciary. Members also noted the concern of the Bar Association that having Justices of Appeal as non-permanent judges of the Court of Final Appeal (CFA) would erode public confidence in the administration of justice, even though these non-permanent Hong Kong CFA judges would not hear appeal from cases in which they had sat.

The Judiciary Administration reported to the Panel on the establishment of judges and judicial officers at various levels of court. The Panel was assured that the current establishment of the judicial manpower was generally sufficient to cater for the operational needs of the Judiciary. The Judiciary Administration also took the view that there should be no objection, as a matter of policy and principle, for serving Justices of Appeal to be appointed as non-permanent CFA judges.

President, these are my remarks on the report.

It only leaves me to thank the able support of the Panel's Clerk, Miss Flora TAI and Legal Adviser, Mr K W KAU, and their colleagues. In this, I am sure I express the sentiment of all members of the Panel. Thank you.

**PRESIDENT** (in Cantonese): Mr Andrew CHENG will address the Council on the "Report of the Panel on Transport 2010-2011".

### **Report of the Panel on Transport 2010-2011**

**MR ANDREW CHENG** (in Cantonese): President, in my capacity as Chairman of the Panel on Transport, I submit the report on the work of the Panel for the current Session and briefly highlight several major items of work of the Panel.

In the current Session, the Panel has continued to pay close attention to public transport fares, which are affecting people's livelihood. The Panel was particularly concerned about the adjustment to MTR fares and suggested that the Government consider setting up a fare stabilization fund and urged the MTR Corporation Limited (MTRCL) to provide more fare concessions. The Panel

has also urged the Administration to review the Fare Adjustment Mechanism (FAM) expeditiously and consider including new factors into the FAM formula to reflect public affordability as well as the business performance of the MTRCL. The Administration indicated that the FAM would be reviewed in the second half of 2012.

The Panel was very concerned that under an inflationary environment, bus fare increases would have a great impact on the livelihood of the general public. The Panel has passed a motion to express strong opposition to the applications for substantial fare increase made by the Kowloon Motor Bus Company Limited and the Long Win Bus Company Limited. The Panel has discussed in detail the fare increase applications made by Hong Kong Tramways Limited and taxi trades before submitting its views to the Administration. The Panel expressed deep regret that the Administration had approved the substantial increase of fares of the six major outlying island ferry services. Given that ferry services were the only means of transport for some outlying islands, members urged the Administration to consider feasible measures such as introducing a fuel cost stabilizing fund in order to enhance the financial viability of the ferry services and maintain fare stability.

The Panel has continued to pay close attention to tunnel tolls. Regarding the application for substantial toll increase by the Eastern Harbour Crossing (EHC) by 40%, the Panel has passed a motion to urge the Government to reject the application for toll increase and take back the franchise for the EHC on grounds of public interest.

The Panel was briefed on the findings of a consultancy study on the distribution of traffic amongst the three road harbour crossings (RHCs). Panel members urged the Administration to identify long-term solutions to the problem of uneven traffic distribution among the three RHCs, including negotiating with the franchisees concerned on the option of buying them back. The Administration indicated that it would report to the Panel the findings of the consultation and the way forward after studying the views received during the public consultation.

The operation safety of public light buses (PLB) remains the main concern of the Panel. The Panel has discussed the Administration's legislative proposals, including mandating all PLBs to install speed limiters and mandating electronic

data recording device as a basic equipment of newly registered PLBs. While expressing support for the proposals, the Panel requested the Transport Department (TD) to continue their efforts on the training and education of PLB drivers in order to enhance their safety awareness and improve service quality. The Panel also noted that the TD was studying the feasibility of extending the requirement of retrofitting seat belts on PLBs to PLBs registered before 1 August 2004 and urged the Administration to formulate the proposal expeditiously.

The Panel has attached great importance to measures for enhancing the safety of reversing goods vehicles. Some members have expressed grave dissatisfaction that goods vehicle owners were required to install reversing video devices (RVDs) in their vehicles on a voluntary basis. The Panel urged the Administration to consider mandating the installation of RVDs on all new and old goods vehicles in different phases expeditiously.

President, in the current Session, the Panel has also discussed other proposals to enhance road safety, including legislative proposal to combat drug driving, enhanced implementation of random breath test, measures promoting cycling safety, and review of the construction of storage boxes on motorcycles and relevant guidelines. Members have requested the Administration to consider and take follow-up actions in respect of their concerns and views on these proposals.

Regarding transport infrastructure, the Panel is very much concerned that the structure of Hing Fat Street slip road of Island Eastern Corridor might be affected by projects. The Panel has urged the Administration to carry out additional measures to better ensure safety, including increasing the monitoring frequency of the abutment and report the investigation outcome.

Regarding the Administration's proposal to extend the effective period of the current limitation on the size of the PLB fleet for five years and a proposed scheme from green minibus (GMB) associations to increase the seating capacity of GMBs from 16 to 20, the Panel has held detailed discussions. The Panel requested the Administration to give primary consideration to public interests and address public concern over the fares and service quality of PLBs.

Regarding the discontinuation of Hung Hom ferry services from 1 April 2011, the Panel was briefed on the reason why the TD had not tendered for the

third time on the franchise and the alternative public transport service arrangements.

The Panel held a joint meeting with the Panel on Financial Affairs in early 2011 to discuss difficulties encountered by the transport sector in obtaining insurance coverage with representatives from the transport trades and the insurance sector and the Administration. The two Panels have agreed to form a joint subcommittee to further study the relevant policy issues.

The Subcommittee on Matters Relating to Railways under the Panel has continued to closely monitor various railway projects. Members have discussed the progress of various projects including Shatin to Central Link, Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, South Island Line and Kwun Tong Line Extension, as well as the relevant funding application and financial arrangement. The Subcommittee has also held a number of discussions on railway incidents and rail cracks and breakages of the MTRCL. In this regard, the MTRCL has invited overseas experts to conduct a comprehensive review of its rails, including its maintenance regime. Besides, the Subcommittee has also held discussions on railway facilities, including automatic platform gates and ventilation shafts, and train compartment design, and put forth improvement proposals.

President, other work of the Panel has been detailed in the written report. I so submit.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam will address the Council on the "Report of the Panel on Financial Affairs 2010-2011".

### **Report of the Panel on Financial Affairs 2010-2011**

**MR CHAN KAM-LAM** (in Cantonese): President, in my capacity as Chairman of the Panel on Financial Affairs (the Panel), I submit the report on the work of the Panel for the current Session and briefly highlight several major items of our work.

In this Session, the Panel continued to provide a forum for Legislative Council Members to exchange views with the Financial Secretary on matters relating to Hong Kong's macro-economic situation. Members are particularly concerned about issues relating to flat prices and inflation. Members pointed out that notwithstanding the introduction of the Special Stamp Duty in November 2010 and the measures taken by the Hong Kong Monetary Authority (HKMA) to tighten mortgage lending, flat prices had continued to increase and it was increasingly difficult for the general public to purchase their homes. Members therefore urged the Financial Secretary to formulate appropriate measures to ensure the stable and healthy development of the property market and proposed a number of measures to him. On the inflation problem, Members were particularly concerned about the surge in food prices and the rentals of private housing and shops. Members urged the Financial Secretary to formulate targeted measures to alleviate the pressure of inflation on small and medium enterprises and the general public.

On financial affairs, the Panel continued to receive regular briefings by the HKMA on the work of the HKMA and its analyses of the trends in global and local financial markets. Noting that the total loans extended by the banking sector in Hong Kong in 2010 was the largest increase in more than 10 years, Members expressed concern about the significant growth in total loans and enquired about the measures taken by the HKMA to ensure prudent risk management by banks. The HKMA advised that the major reason for the significant growth in loans was the strong demand for US dollar credit loans from Mainland enterprises. The HKMA has taken corresponding measures to ensure that the banks did not compromise their credit underwriting standards. Members were also concerned about the progress of the investigations into the complaints against banks for mis-selling of Lehman Brothers-related structured products. The HKMA advised that it had completed the investigation into the great majority of the complaint cases and had proceeded to pursue disciplinary actions in the substantiated cases. The HKMA will continue to make announcements regularly on the progress of handling complaints and the outcome of investigations.

On the Mandatory Provident Fund System, the Panel discussed the findings of the review on the minimum and maximum relevant income levels for Mandatory Provident Fund (MPF) contributions prepared by the Mandatory Provident Fund Schemes Authority (MPFA). The Panel held a special meeting



in April 2011 to receive views from the public. In addition, in April 2011, the Administration and the MPFA also briefed the Panel on the legislative proposals to strengthen the regulation of MPF intermediaries. While members generally supported the proposal, they expressed concern about how the Government would ensure that three front-line regulators together with the MPFA would perform their regulatory role effectively under the proposed regulatory regime. Members also requested the authorities to embark on the legislative exercise as soon as possible, so that the Employee Choice Arrangement can be implemented at an early date.

In this Session, the Administration submitted a number of proposals on improving the market and strengthening protection for investors to the Panel and they include:

- (a) the establishment of an Investor Education Council and Financial Dispute Resolution Centre;
- (b) the establishment of a Policyholders' Protection Fund;
- (c) the establishment of an independent Insurance Authority;
- (d) the statutory codification of certain requirements to disclose price sensitive information by listed corporations; and
- (e) the establishment of a regulatory regime for the over-the-counter derivatives market.

Members have raised a number of concerns and views on these proposals.

President, I hereby thank the Clerk of the Panel, the Legal Adviser and Members for their support of the Panel. A detailed account of the work of the Panel can be found in the written report. I so submit.

**PRESIDENT** (in Cantonese): Mr WONG Yuk-man will address the Council on the report of the Panel on Information Technology and Broadcasting 2010-2011.

**Report of the Panel on Information Technology and Broadcasting 2010-2011**

**MR WONG YUK-MAN** (in Cantonese): President, in my capacity as Chairman of the Panel on Information Technology and Broadcasting (the Panel), I submit the report on the work of the Panel for the current Session and briefly highlight several major items of work of the Panel.

The Panel had discussions on the future development of Radio Television Hong Kong (RTHK). On the development of digital terrestrial television service, the Panel would urge RTHK to further extend the coverage of its digital terrestrial television service in future. Since RTHK already owned many of the AM and FM frequencies, some members urged the Administration to develop digital audio broadcasting to encourage the divergence of views in society. Regarding the development of community involvement in broadcasting on the digital platform of RTHK, members opined that the Administration should extensively consult the public on a concrete proposal. The Administration undertook to brief the Panel before the implementation of the relevant measures. Regarding the introduction of a Media Asset Management project by RTHK, the Panel urged the Administration to provide the necessary manpower to expedite the preservation of the programme archive, which was of great historical value.

As the way forward for RTHK had become clear, the Panel had a meeting with representatives of the RTHK Programme Staff Union (the Union) to receive their views on the manpower arrangement of RTHK. Members noted that representatives of the Union wished to open up vacancies at both the basic and promotion ranks of the Programme Officer (PO) grade to serving non-civil service contract (NCSC) staff, and offer increments based on their experience on appointment. The Panel passed a motion urging the Administration to accord priority to serving NSCS staff and formulate a comprehensive plan to retain quality serving staff for RTHK. The Administration undertook to report on the progress of this matter to the Panel in the future.

On the mid-term review of sound broadcasting licences, members opined that the Government should ensure that the licensees had the financial capability to deliver the commitments made in the Six-year Investment Plans. Some members opined that the Hong Kong Commercial Broadcasting Company

Limited (CRHK) and the Metro Broadcast Corporation Limited (Metro) should conduct survey on the trend of Internet broadcasting and traditional broadcasting, and formulate future investment plan separately for Internet broadcasting. Moreover, as requested by members, the Metro has decided to increase the broadcast hours of its current affairs programme from 4.5 hours to 10 hours starting from 1 January 2011, and progressively increase the broadcast hours thereafter.

On the progress of implementing digital terrestrial television, noting that only about 61% of the households in Hong Kong received digital terrestrial television services, some members urged the Administration to take measures to boost digital terrestrial television take-up.

The Panel welcomed the self-regulatory scheme which served to protect consumer interests and enhance the transparency of the charging information of mobile content services. Some members suggested that the Administration should draw up a timetable to regulate mobile network operators and mobile data service charges.

Regarding the creative industries, members opined that the Administration should assist the local creative industries in gaining greater access to the Mainland and overseas markets. Publicity and promotion efforts should be stepped up to help raise the profile of Hong Kong's creative industries. The Administration should conduct a review of the assessment criteria of the Film Development Fund and relax the upper limit of the production budget of the film projects to benefit more film productions, and applicants should also be allowed to obtain financing from other funding schemes.

As Mr Jeremy Godfrey, the former Government Chief Information Officer, alleged that there was a political assignment coming from a senior government official on the selection of a designated party as the Implementer for the Internet Learning Support Programme (ILSP), the Panel held two special meetings to follow up the matter. The Panel had examined the submissions from Mr Godfrey and the two relevant contenders as well as the papers and documents provided by the Administration. Some members requested that powers to summon witnesses under the Legislative Council (Powers and Privileges) Ordinance should be invoked to appoint a select committee to conduct an inquiry into the matter. Other members of the Panel however considered that there was

no concrete evidence to prove that there had been a political agenda relating to the selection of the Implementer for the ILSP. Nevertheless, the Panel agreed that the Administration should provide further papers and documents to members for further examination.

I would like to take this opportunity to thank members for their support for the work of the Panel and thank the Secretariat and the Legal Adviser for the assistance rendered.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr CHAN Hak-kan will address the Council on the "Report of the Panel on Environmental Affairs 2010-2011".

### **Report of the Panel on Environmental Affairs 2010-2011**

**MR CHAN HAK-KAN** (in Cantonese): President, in my capacity as Chairman of the Panel on Environmental Affairs (the Panel), I submit the report on the work of the Panel for 2010-2011 and briefly highlight several major items of work of the Panel.

President, the problems brought by climate change have all along given cause to great concern. In September 2010, the Administration released the consultation document on Hong Kong's Climate Change Strategy and Action Agenda, proposing to reduce Hong Kong's carbon intensity by 50% to 60% as compared with the 2005 level. To meet this target, the Administration proposed to optimize energy efficiency, adopt green transport, promote use of clean fuel for motor vehicles, turn waste to energy, and revamp fuel mix for electricity generation. The Panel had invited relevant stakeholders to express their views on the consultation document. In view of the Fukushima nuclear incident in March 2011, the Panel again invited deputations in April 2011 to express their views on the development of nuclear energy for local power generation in Hong Kong. Some deputations were of the view that nuclear energy was still a relatively safe and reliable source of energy supply with a low environmental footprint when compared with other energy sources. However, in the light of the Fukushima incident, the Administration should enhance its collaboration with

the Mainland to ensure safe design and operation of the existing and future neighbouring nuclear plants. Some deputations pointed out that potential risks were involved in the use of nuclear power in the absence of safe and permanent means of disposal of nuclear waste, and that increasing nuclear power supply was not a sustainable way to reduce carbon emission. Besides, uranium mining was a polluting process. The real solution to combating climate change was to adopt demand side management to reduce electricity demand and consumption.

President, since franchised buses are the major cause of roadside air pollution, the Chief Executive announced in the 2010-2011 Policy Address the policy objective of having zero emission buses running across the territory. The Administration proposed a trial scheme to be implemented in the second half of 2012 to test the operational efficiency and performance of hybrid buses under local conditions. Given the long lead time for the franchised bus companies to replace their bus fleets by low emission buses, members urged the Administration to expedite the trial and make reference to the similar experience in places such as Shenzhen which had comparable weather conditions as Hong Kong. Members also suggested requiring bus companies to undertake to switch to zero emission buses or the most environment-friendly buses when replacing the existing ones. Other members were concerned that the production of hybrid buses might not be sufficient to replace all the existing buses given the higher cost of hybrid buses.

In respect of waste management, following the implementation of the first producer responsibility scheme (which is commonly referred to as the plastic bag levy) in July 2009, the landfill disposal of plastic bags distributed by retail outlets covered by the Levy Scheme dropped from 14.5% of the total disposal in 2009 to 3.45% in 2010. In the Consultation Document on the Extension of the Environmental Levy on Plastic Shopping Bags published in May 2011, the Administration proposed to extend the scope of the Levy Scheme to cover all retailers but retailers could retain the charge without having to remit to the Administration. The Panel expressed concern that if retailers were not required to remit the charge to the Administration, some retailers might distribute plastic shopping bags free of charge to attract customers, thereby defeating the purpose of the Levy Scheme. To ease the burden of small and medium enterprises (SMEs), some members proposed that the Administration should consider allowing SMEs to submit their returns and remit the charge on a half-yearly basis (rather than a quarterly basis). Other members supported the dual system under which the approach of remitting the charge to the Administration should remain

for existing registered retailers (including large-scale chain operators), while the approach of retaining the charge should apply to the newly covered retailers (which are mostly SMEs). Some members suggested restricting the import of plastic shopping bags, or applying the levy to manufacturers and importers of plastic shopping bags direct.

The Panel had all along been concerned about the operation of the existing environmental impact assessment (EIA) mechanism, but the Panel subsequently decided to withhold the discussion on this subject due to a pending judicial review on the air quality assessment of Hong Kong section of Hong Kong-Zhuhai-Macao Bridge project. In April 2011, the High Court handed down a judgment which rejected six of the seven issues contended by the applicant. However, after considering the purpose of the Environmental Impact Assessment Ordinance, the High Court ruled that apart from assessing the cumulative environmental impacts caused by the designated projects, the EIA report should include a "stand alone" analysis of the project and put forward relevant mitigation measures, so as to allow the Environmental Protection Department (EPD) to consider whether the relevant impacts have been kept to the minimum. While acknowledging that the Administration had decided to lodge an appeal against the judgment, the Panel considered that there would be no question of subjudice so long as the discussion did not touch on the judicial review case. During the discussion on this subject, deputations were invited to attend the meeting and express their views. Some members were concerned about the conflicting roles of the EPD as both the administrator and umpire in the EIA process. The Administration was requested to consider appointing an independent panel to execute the EIA process. It should also assess the anticipated impacts on and delay of the development projects once all the requirements as set out in the judgment were complied with.

The other major items of work of the Panel are set out in the report submitted by the Panel. President, I wish to take this opportunity to express my gratitude to the Clerk to the Panel, Legal Adviser and members of the Panel for their efforts and support over the past year. Thank you, President.

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat will address the Council on the "Report of the Panel on Housing 2010-2011".

**Report of the Panel on Housing 2010-2011**

**MR LEE WING-TAT** (in Cantonese): President, in my capacity as Chairman of the Panel on Housing (the Panel), I submit the report on the work of the Panel for 2010-2011 and briefly highlight several major items of work of the Panel.

In view of surging private property prices, the Panel was of the view that the Administration should consider implementing a five-year rolling programme on land production and explore more new land resources through means such as reclamation, in order to enhance public confidence in the supply of private residential flats. Some members pointed out that the Administration should not excessively rely on the Application List (AL) as the main source of land supply, given that the sale of land under the AL would only be triggered upon application by developers. The Administration should consider holding regular land auctions to resume initiative on the supply of land. To optimize land use and increase flat supply, some members suggested allocating land which had remained on the AL for a long time to the Hong Kong Housing Society (HKHS) for housing development.

Based on the results of the public consultation exercise conducted by the Administration on the issue of subsidizing home ownership in May 2010, the Administration has proposed to launch a new housing initiative, namely, My Home Purchase Scheme (MHPP), in collaboration with the HKHS. Under the MHPP, the Administration will provide land for the HKHS to build "no-frills" small and medium sized flats for lease to eligible applicants at prevailing market rent. The tenancy period will be up to five years during which the rent will not be adjusted. Within a specified time frame, MHPP tenants may purchase the flat they rent or another flat under the MHPP at prevailing market price, or a flat in the private market. They will receive a Purchase Subsidy equivalent to half of the net rental they have paid during the tenancy period, and they may use it for part of the down payment. The first MHPP project, which is expected to complete in 2014, will supply about 1 000 flats. Some members asked the Administration how the rent and prices of MHPP flats would be determined. Some members proposed that eligible MHPP applicants who could afford the down payment be allowed to purchase their flats at the time of in-take.

As the MHPP was designed to provide an additional choice for the sandwich class, the Panel considered that a simpler way was to relaunch the

Home Ownership Scheme (HOS) to meet the aspiration for home ownership of the general public. In the event that the Administration decided to relaunch the HOS, consideration could be given to using the sites originally earmarked for the MHPP for developing HOS flats, in order to expedite the construction process. Some members opined that more public rental housing (PRH) flats should be provided to take into account the needs of those who only wanted a place to live and had no plans to buy their own homes. The Panel passed a motion requesting the Administration to provide at least 35 000 PRH units each year, and immediately resume the HOS.

The Panel noted that the income and asset limits for 2011-2012 would increase by 15.6% and 3.3% respectively over those for 2009-2010. As a result, the number of eligible households for the PRH would increase by about 25 000. Members noted that the average waiting time for PRH would inevitably be lengthened as a result of the increase in the number of eligible households. In this connection, the Panel passed a motion urging the Administration to consider increasing the construction of PRH flats to tie in with the increase in the number of PRH applicants, with a view to realizing the target of allocating PRH flats to applicants within three years.

To further strengthen the regulation of the sale of first-hand residential properties, the Steering Committee on Regulation of Sale of First-hand Residential Properties by Legislation (Steering Committee) was established to study issues on regulating the sale of first-hand flats (including projects developed under old lease conditions, Consent Scheme projects, as well as completed and uncompleted first-hand residential properties) by legislation. The Steering Committee will submit a report to the Secretary for Transport and Housing in October 2011. Consultation on the report will be conducted in the form of a White Bill to expedite the consultation process. Noting that the Steering Committee mainly comprised government officials and professionals, some members were concerned about how the view of the Legislative Council and the general public could be incorporated in the report to ensure that the recommendations contained therein would meet public aspirations. As there was no certainty that the Chief Executive for the next term and his/her team of government officials would agree to the introduction of the legislation, members urged the Administration to expedite the legislative process by introducing the White Bill in October 2011 for public consultation in tandem with the release of the report of the Steering Committee, with a view to introducing the Blue Bill in



January 2012 to allow sufficient time for the Legislative Council to complete scrutiny of the Blue Bill within the current legislative term.

The other major items of work of the Panel are set out in the report submitted by the Panel. President, I would like to take this opportunity to thank all members of the Panel for their support over the past year. My thanks also go to the Secretariat and Legal Adviser for providing assistance to the work of the Panel. Thank you.

### QUESTIONS UNDER RULE 24(4) OF THE RULES OF PROCEDURE

**PRESIDENT** (in Cantonese): Questions. Apart from the six oral questions for this meeting, I have permitted Mr IP Kwok-him and Mr WONG Yuk-man to respectively ask an additional urgent question under Rule 24(4) of the Rules of Procedure.

First urgent question.

#### Safety of Escalators

1. **MR IP KWOK-HIM** (in Cantonese): *President, an incident of an escalator suddenly reversing direction occurred at Beijing Zoo Station of Beijing Metro Line 4 on 5 July this year, resulting in one death and 13 injuries, and on 7 July this year, an incident of an escalator of the same model and produced by the same manufacturer emitting smoke occurred at Mei Foo MTR Station. It has been reported that escalators of this model were involved in several serious accidents in Shenzhen and Beijing respectively over the past seven months, causing a total of one death and 55 injuries. The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) of the People's Republic of China has requested that escalators of this model all over the country be immediately suspended from use for inspection on the ground that they have design defects. At present, a total of 78 escalators of the same model are currently installed at Mei Foo, Mong Kok, Tsim Sha Tsui, Shau Kei Wan, Lo Wu, Lok Ma Chau, Sheung Shui, Kowloon Tong, Austin and Hung Hom Stations, which are all MTR stations with high passenger flows, and the above incidents*

*have aroused public concern about the safety of escalators. In this connection, will the Government inform this Council:*

- (a) of the number of reports on incidents received by the Government over the past year involving escalators of the same model which were produced by the same manufacturer involved in the aforesaid incident in Beijing, and among the reports, the number of those which involved improper maintenance or design defects; and*
- (b) given that the AQSIQ has pointed out that the escalator model involved in the incident has design defects, and requested that escalators of this model all over the country be immediately suspended from use for inspection, whether the Government will immediately suspend the use of those escalators in Hong Kong which are of the same model and were produced by the same manufacturer involved in the incident; if it will not, of the reasons for that; whether the Government has enquired with the Mainland authorities concerned about the design defects of this model of escalator in order to take follow-up action?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, at present, lifts and escalators in Hong Kong are regulated by the Lifts and Escalators (Safety) Ordinance (Cap. 327) (the Ordinance). To ensure that only escalators of proper design, good quality and in compliance with the design code and relevant requirements will be used in Hong Kong, the Ordinance requires prior written approval from the Director of Electrical and Mechanical Services (the Director) for the brand, model and main safety components of the proposed escalator before they may be installed in Hong Kong. In addition, only a registered escalator contractor may be engaged in the installation project. The installation works must also be carried out by qualified persons under the Ordinance. After completion of the installation works, the escalator must further be certified to be in safe working order by a registered escalator engineer and approved by the Director before it is allowed to commence operation. The Ordinance also requires an escalator owner to engage a registered escalator contractor to undertake regular maintenance work, and a registered escalator engineer to carry out periodic examination as well as to certify that the escalator is still in safe working order.

Under the current regulatory system, most of the escalator incidents were not caused by equipment fault. However, to further enhance control over lifts and escalators, we introduced the Lifts and Escalators Bill to the Legislative Council in May this year to further strengthen the regulation for ensuring public safety.

My reply to the two parts of the question is given below:

- (a) Over the past year, the Electrical and Mechanical Services Department (EMSD) received only one equipment fault report that involved an escalator of the same manufacturer and model as the escalator in the Beijing Zoo Station incident occurring on 5 July. The incident happened on 7 July at MTR's Mei Foo Station. Initial findings revealed that the incident was due to failure on the part of the auxiliary brake system leading to overheating caused by friction. The MTR Corporation Limited (MTRCL) has immediately arranged its contractor to carry out repair works. The EMSD will probe into the cause of the incident. According to the EMSD's previous investigation findings, equipment faults of escalators were mainly due to damaged escalator handrail belts or escalator steps. No flaw in escalator design was detected.
- (b) We understand that, after the Beijing Zoo Station incident on 5 July, relevant Mainland authorities have required ceasing of the operation of all escalators of the same model for thorough examination to ensure that no escalators with hidden defects are allowed to operate. Of the 80 escalators of that same model currently operating in Hong Kong, 78 are installed within the MTR arena. The remaining two are installed at a footbridge at Fortress Hill and a subway at Middle Road respectively. Managing the repair and maintenance of these two escalators, which are government properties, comes under the purview of the EMSD.

Immediately on the very day of the accident (that is, 5 July 2011), the EMSD required the MTRCL and its contractor to examine all its escalators of the same model. The examination was completed on 8 July and the result confirmed that all the escalators examined, including all immovable parts and driving host machines, were in

normal operation. The EMSD has also deployed staff to conduct random checks on the examination work and did not find any nonconformity with the safety standards. Separately, examination of the two government-owned escalators of the same model was completed on 7 July and the results also confirmed compliance with the safety standards. We have a well-established and effective approval regime for escalator design. Our maintenance regime for escalators stipulates regular professional examination. The EMSD conducts random checks and monitoring to ensure compliance. Examination of the escalators of the same model was also carried out promptly. As such, we do not consider it necessary to cease the operation of escalators of the same model in Hong Kong. As the relevant Mainland authorities are conducting an in-depth investigation into the incident, we will keep in close contact with them to find out the cause of the incident and take appropriate follow-up actions.

**MR IP KWOK-HIM** (in Cantonese): *President, the Secretary has emphasized in her reply that the EMSD has conducted an investigation and considered that the incident was due to equipment faults, not flaws in design. But it is the view of the AQSIQ that the escalator model suspended in operation has design defects. So may I ask the Government if a fresh examination has been done on the design of this kind of escalators? Or are the design standards adopted in Hong Kong different from those adopted on the Mainland, thus accounting for the different conclusion reached by the EMSD, namely while the AQSIQ holds that there are design defects, the EMSD of Hong Kong thinks that there are no design defects?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, the regulatory system for escalators in Hong Kong is a multi-tier one. The regime includes a requirement that the design of every escalator model has to be approved by the Government and the safety components of every model should also be approved before they can be installed. For the model of escalators which is a concern to Members today, it was approved by the EMSD in 2000 for installation in Hong Kong. As for the approved escalator models, their

regulation during and after installation and before their actual use are all handled in accordance with the law and the relevant code of practice.

Therefore, as I have said in the main reply, insofar as the incident involving an escalator of the same model in the MTR's Mei Foo Station on 7 July is concerned, the conclusion reached by both the MTRCL and the EMSD is that no flaw in design was detected.

As to the practice in the regulatory system on the Mainland, sorry, I cannot give an explanation here. However, the EMSD and the AQSIQ of the Mainland had signed the Cooperation Arrangement on Electrical and Mechanical Products Safety and that includes a notification system, a regular working group and exchange and research activities. As far as I know, the EMSD has sent an engineer to the Beijing Metro to find out more about its follow-up investigation.

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

**MR IP KWOK-HIM** (in Cantonese): *The Secretary has not answered my supplementary question. My supplementary question is: Do the two places have different design standards? The Secretary has only repeated her reply and that is all.*

**PRESIDENT** (in Cantonese): The Secretary has said that the SAR Government does not for the time being know the standards of the Mainland. Secretary, do you have anything to add?

**SECRETARY FOR DEVELOPMENT** (in Cantonese): No, I have nothing to add.

**MR ANDREW CHENG** (in Cantonese): *President, the Secretary has said in the second paragraph of the main reply that under the current regulatory system,*

*most of the escalator incidents were not caused by equipment fault. However, the Secretary has also said that the incident which happened on 5 July and the one which happened at the MTR Mei Foo Station on 7 July were due to the failure on the part of the auxiliary brake system, leading to overheating caused by friction. It is obvious that they are equipment faults, despite the denial by the Secretary. But incidents have happened in Beijing, Shenzhen and Mei Foo and they are all related to those that happened in the MTR escalators. May I ask the Secretary why the EMSD does not undertake a full-scale inspection together with the MTRCL, instead of the so-called full-scale inspection undertaken at the MTR in the form of random checks only?*

*We have all along been worried about the outsourcing arrangements of the MTRCL in that they will cause problems like variances in quality and insufficient manpower of the staff for repairs and maintenance and so causing dangers in this kind of escalators. So may I ask the Secretary, if the EMSD still chooses to undertake this kind of inspection by random checks, whether it will make us think that the inspections now under taken by the MTRCL are not sufficient, and given the variances in quality of the related staff, such kind of problems will still occur in future?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): The MTRCL as the owner of these escalators has a responsibility to repair, service and carry out regular inspections of its escalators in accordance with the relevant laws and codes of practice in order to ensure safety. The EMSD as the regulatory agency will regulate such matters pursuant to the law. Generally speaking, we will use the random checks and risk assessment as a basis. Mr Andrew CHENG should know very well that we have enhanced our random checks since a few years ago and on average, one escalator will be randomly checked out of every seven escalators. But since that is risk assessment, so we have done more random checks this time on similar models of escalators in MTR stations. Though 18 escalators will be checked, as of today, the EMSD has done more than 50 random checks and the number is far more than that under the one-in-seven rule in normal circumstances. We have considered the risk assessment made and we will further enhance the random check and inspection work.

**MS MIRIAM LAU** (in Cantonese): *President, what we are talking about now is that the escalators used in Beijing and Hong Kong are produced by the same manufacturer and the model is the same. The conclusion drawn by the AQSIQ with respect to the escalators in Beijing is that there are design defects, and so it has requested that escalators of this model be suspended from use. But the reply given earlier by the Secretary is that the EMSD has checked those escalators and has not found any equipment failing to meet the safety specifications.*

*May I ask the Secretary, if these escalators can meet safety specifications, if it means that there is definitely no defect in design?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, put simply, the situation is as described by Ms Miriam LAU. As I have explained, under our multi-tier regulatory system, escalators of every brand and model must be checked and approval if they are to be installed in Hong Kong. That is to say, approval from us will have to be sought for the design and safety components before the contractors can place orders and install these escalators. In the course of such vetting, of course the EMSD must be fully satisfied with the design and that the escalator concerned is safe and free from defects, before it can be registered as a brand and model for use in Hong Kong.

**MR TAM YIU-CHUNG** (in Cantonese): *President, there is a view which holds that when an accident happens, there are two factors which may be given greater consideration. One is that the escalator concerned has been in heavy use and so metal fatigue is caused, hence accounting for the accident. The other is that the MTRCL has frequent publicity efforts which encourage passengers to walk on the left of an escalator and stand on the right of it. And accidents may happen easily when passengers walk on an escalator. How does the Government think about this?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): With respect to the two phenomena described by Mr TAM, it is true that escalators in Hong Kong are in heavy use and it is because of this that we have issued codes of practice and imposed more stringent requirements on the regular maintenance and inspection of escalators than those required by the law. This practice is adopted after

discussions with the industry. The law only requires the contractor to undertake regular maintenance every month, but now our requirement is that such maintenance should be carried out every two weeks. This is the first point I wish to make.

The second is that figures and statistics prove that Mr TAM's observation is correct. Often accidents happen on escalators when passengers are using them. In 2010, for example, there were 1 395 reports of accidents involving escalators and of these cases, as many as 1 370 were caused by improper use of escalators. Cases of accidents that happened purely due to mechanical failure take up exactly 1% or 13 cases. So all owners of escalators, the MTRCL and the EMSD will all enhance public education efforts in this regard.

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

**MR TAM YIU-CHUNG** (in Cantonese): *About the practice of standing on the right and walking on the left of an escalator, as I mentioned just now is that a cause of accidents? The Secretary has not given a reply on that point.*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, I am afraid I do not have an answer to that. But I can make enquiries with the EMSD and see among these so-called incidents caused by the improper use of escalators by passengers, how many are caused by the point raised by Mr TAM.

**MR IP KWOK-HIM** (in Cantonese): *President, about the incident at Metro Line 4, I made a special trip on it when I attended the National People's Congress meetings two years ago. At that time, the line was brand new and so the chances of it developing metal fatigue would be low. With respect to similar escalators used in Hong Kong and which are involved in incidents, they have been found to have no problems and design defects, so only mechanical failure is involved. In such circumstances, the people of Hong Kong are worried that similar problems will emerge in Hong Kong. Will the Secretary enhance publicity efforts so that the people will know how they should use an escalator*



*and what better means they can use to ensure their personal safety when an accident happens?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, I will request the EMSD to consider the suggestion by Mr IP. As a matter of fact, if Members have noticed, the EMSD has used a variety of methods such as comics and cartoons to enhance public awareness of safety when using escalators or lifts, in particular, escalators.

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

### **Police's Handling of Public Assemblies**

2. **MR WONG YUK-MAN** (in Cantonese): *President, in the early hours on 2 July this year, over 2 000 protesters participated in a sit-in protest at Queensway Road and requested to stage a demonstration outside the Government House to express the wish that the Government would withdraw the Legislative Council (Amendment) Bill 2011, and the police eventually decided to use force to clear the scene and took about 140 of the protesters to a police station. In the incident, Legislative Council Members and reporters were injured. As a similar assembly will be held outside the Legislative Council Building from 13 July until the evening on 15 July, will the Government inform this Council:*

- (a) whether the police will, without giving prior warning, use pepper spray and force on the participants of the aforesaid assembly to be held from 13 to 15 July;*
- (b) whether the police will cordon off the area in which the assembly will be held, and of the circumstances under which the police will allow other people to enter such cordoned-off area; and*
- (c) of the circumstances under which the police will arrest participants of the assembly, and the criteria the police will adopt in using handcuffs or plastic strings to arrest them?*

**SECRETARY FOR SECURITY** (in Cantonese): President, it is mentioned in the Honourable Member's question that protesters were taken to a police station on 2 July. I must point out that the organizer of the public meeting and public procession on 1 July had advised the police that the public meeting would commence at 2 pm on that day at the Victoria Park, followed by a procession to the Central Government Offices where another meeting would take place. The event should end at 8 pm. The police maintained communication with the organizer and put in place necessary crowd control measures and arrangements in light of the details of the event concerned.

After the procession on that day, most of the participants left peacefully either in the final phase of the event or at the Central Government Offices. However, without giving prior notice to the police according to the law, some people forced their way to and occupied the eastbound and westbound carriageways of Connaught Road Central and the westbound carriageway of Queen's Road Central near the Bank of China Tower, seriously blocking up the main carriageway of the Central District on Hong Kong Island.

As seen from the scene, the protesters concerned refused to leave despite the police's repeated advice and warnings including the serving of large warning banners. The eastbound and westbound traffic of the Central District had almost come to a standstill for over seven hours. Some protesters even pulled the mills barriers and what was aggravating was that some individuals dashed to the road. Fortunately, the drivers affected braked sharply to avoid serious and unfortunate accidents. On another front, some protesters suddenly threw objects at police officers and charged the police cordon line. Therefore, the police had to use Oleoresin Capsicum (OC) foam to stop the violent acts of protesters and I understand that most of the police officers had given advance verbal warnings before using OC foam. As their repeated advice and verbal warnings turned futile, the police finally made arrest in the small hours of 2 July to resume public order and traffic flow. The behaviour of that batch of protestors, including forcible occupation of the Central District's main carriageway which caused serious traffic congestion, challenged the police's authority and operation in maintaining law and order and brought damages to the community's respect to freedom of expression and peaceful demonstration. I believe the community at large dismisses such behaviour.

President, I would like to emphasize that the HKSAR Government respects the rights of peaceful public procession, meeting and expression of views. As Hong Kong is a crowded place, large-scale public meetings and processions will unavoidably affect other people or road users, and may have impacts on public order. In this connection, the police's policy is to strike a balance by facilitating all lawful and peaceful public order events while taking responsibility to reduce the impact of such events on other members of the public to ensure public safety and order. In many of the large-scale public processions or meetings held in Hong Kong in the past, most of the participants of public order events accept that in exercising their rights of expression, they should, on the premise of observing the law of Hong Kong without affecting social order, proceed in a peaceful and orderly manner.

Under the Public Order Ordinance, any public meeting or procession the attendance of which exceeds the limit prescribed in the Ordinance, that is, public meetings of more than 50 persons and public processions of more than 30 persons, should give notice to the Commissioner of Police (CP) not less than seven days prior to the intended event, and it can only be conducted if the CP has not prohibited or objected to it. The CP may impose condition(s) upon the organizer(s) to ensure order of the public order event and public safety. Organizers may appeal to the statutory Appeal Board on Public Meetings and Processions if they consider the CP's decision unreasonable.

Generally speaking, upon receipt of a notification of a public meeting or procession, the police will maintain active and close communication with the organizer to offer advice and assistance. Police community relations officers may also be present during an event as appropriate to act as a channel of communication between the organizer and the Field Commander. The police have a duty to take lawful measures to assist the organizer to appropriately manage the public meetings or processions he organized. In assessing the crowd and traffic management measures and manpower required for ensuring public safety and public order during each public order event as well as minimizing the impact on other people and road users, the police will make reference to the number of participants and information provided by the organizer, experiences in handling similar events as well as other operational considerations.

The three parts of the Honourable Member's question are related to public meetings to be organized by the Member's affiliated organization outside the

Legislative Council Building between today and 15 July. We hope that the organizer will co-operate with the police, and the police will certainly provide appropriate assistance to facilitate the event to be held under lawful and orderly principles. While it is not appropriate for me to disclose or discuss the police operation strategies, enforcement plan or any hypothetical questions about different scenarios, I would like to explain the police's basic objectives and policies in handling public activities.

As regards lawful and peaceful public meetings and processions which are held in an orderly manner, the police will not unreasonably restrict participants from entering and leaving the area of the event. The police will take appropriate crowd control measures to partition participants of different public order events as well as the participants and other road users in order to protect the safety of participants and other members of the public.

On occasions where the law is, or is likely to be, violated during public meetings or processions by acts of individuals, particularly when there are acts which may cause danger to others or lead to a breach of public order, the police will make professional judgment based on the assessment at scene and take prompt enforcement actions where necessary. Where the circumstances and conditions at the scene permit, the police will certainly, in the first instance, issue verbal warnings to the person concerned before making any intervention. However, if the person adopted an unco-operative attitude, and his continuous acts might involve disruption to public order, or even endanger public safety, the police will stop his behaviour or acts by taking prompt and appropriate actions to avoid further deterioration of the situation.

If the police believe that there is evidence of illegal acts in a public order event, the police will consider arresting the suspects. According to the internal guidelines of the police, police officers use handcuffs or plastic strings on arrested persons only when it is reasonably necessary, including that there are reasons for police officers to believe that the arrested persons may escape, it is imperative to ensure the safety and control of the arrested persons or to protect law enforcement officers themselves or other persons from injury.

President, our society respects peaceful and lawful public meetings and processions. We recognize the rights of expressing views and demands in a rational and peaceful manner, but we cannot tolerate any violent behaviour

jeopardizing the law and order. I therefore call on participants of public meetings or processions, including participants of public meetings held from today to 15 July outside the Legislative Council Building, that, in exercising their right of free expression, they should ensure the events to be held in a peaceful and orderly manner on the premise of observing the Hong Kong law as well as respecting and safeguarding public order.

**MR WONG YUK-MAN** (in Cantonese): *President, I spent one minute 20 seconds raising my main question, but the Secretary has spent eight minutes 40 seconds on his reply. Given that the whole urgent question only allows 20 minutes, this so-called Question and Answer Session is really lame. What is more, six of the 12 paragraphs in the Secretary's main reply are lame, for he has merely stated some of the facts known to everyone. While he spent nine minutes delivering a speech without replying to my main question, his reply also showed that he had missed the thrust of the question. The number of people arrested on that day was over 200, the largest number of people arrested in protests or assemblies in Hong Kong since the arrests made in the World Trade Organization demonstration. Although there were two groups of people on the scene, the Secretary's remarks in the third paragraph were a mess. He could simply not distinguish who were in these two groups of people.*

*In the third paragraph, he said, "On another front, some protesters suddenly threw objects at police officers and charged the police cordon line. Therefore, the police had to use Oleoresin Capsicum (OC) foam". "Hulk" and I, who were on the scene, know that the Secretary was lying; if he was not lying, he must have been given the wrong information by his aides.*

*Simply put, I am going to raise my supplementary question now. Given the actions taken by the Secretary last time, what actions will he take should a similar situation occur tomorrow? He has talked a lot of nonsense here. Secretary, it was very clear that we were absolutely peaceful on that day. The situation on the scene right from the beginning, including the scene in which 138 people were arrested and taken away, had been filmed by a couple of people. The Secretary was lying, right? We were absolutely peaceful, when did we put up resistance? The Secretary said that the police had reasonable ground to believe that the protesters might cause injury to themselves and police officers. But let me tell Members that we set off from Southorn Playground on that day*

*and followed the procession route all the way, only that the entire Central was cordoned off by thousands of policemen from all sides. Do you know that we were trapped by policemen like "cornered beasts" there? It was the policemen who did not allow us to leave, and yet the Secretary said that we had occupied .....*

**PRESIDENT** (In Cantonese): Mr WONG, you must stop making a speech. I cannot allow you to take advantage of this urgent question to turn this session into an occasion for confrontation over a past event.

**MR WONG YUK-MAN** (in Cantonese): *President, I have not finished yet. Just now, the Secretary spoke for over eight minutes; I am only demonstrating to the President. This urgent question only allows 20 minutes, and yet he has spent over eight minutes .....*

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

**MR WONG YUK-MAN** (in Cantonese): *My question for him is ..... we did not mind being arrested. I have taken the arrest in stride. "I have made my own bed and I must lie on it" .....*

**PRESIDENT** (In Cantonese): Please raise your supplementary question.

**MR WONG YUK-MAN** (in Cantonese): *..... I have to raise a supplementary question for those who were arrested by policemen with plastic strings and handcuffs. Why would policemen use plastic strings and handcuffs under the circumstances on that day?*

(Mr Paul TSE raised his hand in indication)

**PRESIDENT** (in Cantonese): Mr Paul TSE, do you have a point of order?

**MR PAUL TSE** (in Cantonese): *President, Rule 25 of the Rules of Procedure (RoP) clearly states the rules to which a question shall conform. I believe there is no need for me to remind the President that, under certain provisions of the RoP, the speech being delivered by the Member is entirely unnecessary. Moreover, the Member has failed entirely to raise this supplementary question in accordance with the RoP.*

**PRESIDENT** (In Cantonese): Mr WONG, please raise your supplementary question immediately.

**MR WONG YUK-MAN** (in Cantonese): *The Secretary has not answered clearly why the police had to handcuff all of us, 138 people, and use plastic strings on Queensway Road in that evening? The Secretary pointed out in the main reply that the police did so for fear that we might escape and cause injury to the law-enforcement officers or ourselves, but did he ask his subordinates clearly whether such a situation had occurred when the 138 people were arrested in that evening? I remember I .....*

**PRESIDENT** (in Cantonese): Mr WONG, if you have raised your supplementary question, please allow the Secretary to reply.

**MR WONG YUK-MAN** (in Cantonese): *OK.*

**SECRETARY FOR SECURITY** (in Cantonese): President, I believe members of the public are sharp-eyed, and they can tell who is lying. Regarding the question raised by Mr WONG Yuk-man as to why the police should have handcuffed the protesters in that evening, I must emphasize again that the arrest was made in the early hours of 2 July in order to restore smooth traffic flow in Central. At that time, some of the protesters behaved in an emotional manner and even dashed into the road and caused dangers without regard to the safety of

themselves and other road users. As the police did not want to see any accidents happen when these protesters were being taken to a police station after arrest .....

**MR WONG YUK-MAN** (in Cantonese): *President, he has not answered my supplementary question. He was talking about another issue.*

(A Member interrupted and described the Secretary as being irrelevant)

**PRESIDENT** (in Cantonese): You should allow the Secretary to reply first. If you still think that the Secretary has not answered your supplementary question after he has finished, you may raise it again.

**SECRETARY FOR SECURITY** (in Cantonese): Hence, the police must use handcuffs and strings. There are views that some protesters did not behave in an emotional manner and so the police officers should not have used handcuffs or strings on them. But, in fact, during the demonstration, some protesters repeatedly charged the police cordon line and dashed into the road, thereby causing dangers, without regard to the safety of themselves and other people on the scene. As the police did not want to see any accidents happen when these protesters were being taken to a police station after arrest, it was necessary to use handcuffs and strings to ensure that the arrested persons were brought under control and protect the safety of these people and others.

**DR PHILIP WONG** (in Cantonese): *President, protesters behaving too radically would endanger the safety of others. After the 1 July march, some protesters were reluctant to disperse and dashed into the road without regard to safety, forcibly sat on the road, and even charged at police officers. Such behaviour posed great dangers to themselves, other road users and police officers who were enforcing the law. The community feels sorry for a police station sergeant who died recently when handling a protest stayed on a footbridge.*



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

**DR PHILIP WONG** (in Cantonese): *In this connection, have the police enhanced the training of police officers in handling the violent or dangerous behaviour of protesters to enable them to take better preparations in protecting the safety of themselves and that of the public at large? Will the police deploy more manpower to handle public assemblies and procession activities?*

**SECRETARY FOR SECURITY** (in Cantonese): President, the police absolutely have adequate ability and manpower to handle large-scale public order events. In view of the increasing number of protests in recent years and the relatively radical approaches adopted by protesters, the police have been enhancing the training of front-line officers in handling public assemblies and improving the arrangement for cordon lines. In handling any public order events, the police will take into account the number of participants, the public reaction possibly caused by the event, the previous strategy and experience in handling similar events, the restrictions to be possibly encountered when taking actions, and so on, in making comprehensive risk assessments and considerations to determine the manpower required to be deployed and taking appropriate crowd control measures to ensure that this type of public order events can be conducted in a safe and orderly manner. Should the assessment indicate that the participants of a public order event may behave in a radical manner, the police will make appropriate plans and proper preparations as required. Although the police have adequate ability, it does not mean that protesters can resort to violence or disrupt the order to express their views.

The HKSAR Government, the Security Bureau and the entire Police Force are deeply saddened by the incident in which a police sergeant died when handling a protest conducted atop a footbridge, as mentioned by Dr WONG just now. This incident aptly highlights that the expression of views should be conducted in a peaceful and orderly manner. It is extremely irresponsible of protesters to resort to dangerous acts, snatch mills barriers from the police, dash into the road or use violent means to express their views, as this would affect the safety of the protesters themselves, other members of the public and police officers. Such behaviour is absolutely unacceptable to our society.

**MR JEFFREY LAM** (in Cantonese): *President, I believe our society will respect the freedom of different people to express their views. However, I believe the majority of Hong Kong people will agree that views should be expressed in a rational and peaceful manner. After the end of the 1 July march, we saw on the television that some people stayed behind and occupied the road. I also saw on the television that some bus and taxi drivers were greatly furious and complained why the police did not tackle the situation expeditiously by removing the protesters on the road or clearing the scene to restore social order as soon as possible.*

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

**MR JEFFREY LAM** (in Cantonese): *My question for the Secretary is: Why did the Government or the police act so timidly on that day by persistently tolerating these protesters who blocked the road and challenged the police officers? Why did the police not clear the scene expeditiously to restore social order and traffic to normal? Will the Government pursue charges against the arrested protesters?*

**SECRETARY FOR SECURITY** (in Cantonese): President, I have to reiterate here that the HKSAR Government respects the rights of the public in exercising their freedoms and rights of peaceful meeting and procession, and expression. However, we absolutely do not tolerate any violent or criminal behaviour. On that day, the police officers maintaining social order were restrained, rather than being timid in taking actions, for the purpose of protecting the safety of the protesters and other people in order to maintain social order. After the police's repeated advice and warnings, the protesters concerned still refused to leave and some of them suddenly hurled objects at police officers and charged the police cordon line, disrupting public order. Therefore, the police must take resolute and effective arrest actions to restore public order and traffic. The police arrested a total of 231 people suspected of obstruction of public places and unlawful assembly. These cases have been referred to the Central District Crime Squad for follow-up. The police will seek advice from the Department of Justice on the cases.

**MR CHAN KIN-POR** (in Cantonese): *President, performing duty in protests, which is absolutely backbreaking, is part of the work of police officers. In handling such violent scenes, there is a chance for police officers to suffer both physical and psychological injuries. Their family members will be worried, too. May I ask what measures the Government will take to boost the morale of these front-line officers, such as whether the police officers will be given allowance or leave, so that they will still be willing to face such violent scenes in the future?*

**SECRETARY FOR SECURITY** (in Cantonese): President, it is the duty of police officers to maintain law and order, social order and public safety in Hong Kong to ensure that processions are conducted in an orderly manner. Handling violent challenges from a small fraction of people is thus unavoidable. I can assure Mr CHAN Kin-por that the morale of the entire Police Force is extremely high. Our high morale is not something that can be boosted with any cash subsidy. The management of the Police Force and its subordinates are united as one in serving Hong Kong people.

**MR ALBERT CHAN** (in Cantonese): *President, I was arrested in the small hours of 2 July and given an arrest number of 12 by the North Point Police Station. President, insofar as the entire operation launched by the police in the small hours of 2 July was concerned, there were seven problems .....*

**PRESIDENT** (in Cantonese): Mr CHAN, you must not make a long speech.

**MR ALBERT CHAN** (in Cantonese): *President, I am not making a speech. I am going to examine whether these seven problems will occur again during these three days. President, I only wish to briefly mention these problems. The first problem was abuse of police power, resorting to road closure indiscriminately, making arrests and preventing members of the public from leaving the scene of protest; the second problem was using OC foam without warning; the third problem was using handcuffs to detain a 82-year-old elderly person; the fourth problem was unlawful arrests of reporters; the fifth problem was unreasonably preventing members of the Hong Kong Human Rights Monitor from monitoring the acts of the police on the scene; and the sixth problem was launching a*

*surprise attack on and punching protesters. President, a photograph is carried in this newspaper of how I was assaulted by police officers. On that day, the police arrested over 200 people, but none of them has been prosecuted so far. The seventh problem was telling a pack of lies .....*

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

**MR ALBERT CHAN** (in Cantonese): *The police officers' description of the situation afterwards is like the Beijing authorities' description of the students in the 4 June incident years ago.*

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

**MR ALBERT CHAN** (in Cantonese): *Generally speaking, will the police keep repeating these mistakes in these three days and keep telling a pack of lies?*

**PRESIDENT** (in Cantonese): Mr CHAN, despite your accusation of the Government and the police and your supplementary question, I can only allow the Secretary to give one response.

**SECRETARY FOR SECURITY** (in Cantonese): President, the accusations made by Mr CHAN just now are extremely serious. Should participants of the procession on that day have any dissatisfaction with the police in handling the incident, they may lodge a complaint to the Complaints Against Police Office. As for Mr CHAN's question regarding what plans the police will make during these couple of days, that is, from today till the 15th, to deal with members of the alliance to which Mr CHAN belongs and who claim to have the intention to besiege the Legislative Council, it is inappropriate for the police to discuss its plan and strategies here, as I mentioned in the main reply. However, I would like to reiterate that the police will definitely employ lawful means to strive to complement the protesters' rights of expressing views in a peaceful manner. However, we must also reiterate once again that we hope participants of

processions or protests can observe the Hong Kong law and express their views in a peaceful manner.

**MR ALBERT CHAN** (in Cantonese): *President, I did not ask him anything about strategies. I merely asked him whether or not the seven mistakes would be repeated.*

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

**SECRETARY FOR SECURITY** (in Cantonese): President, regarding some of the accusations frequently made by Members, it is inappropriate of me to debate with them here.

**PRESIDENT** (in Cantonese): We have spent more than 25 minutes on this question. As the main reply given by the Secretary just now was relatively long, I allow one more Member to raise a supplementary question.

**MR ALBERT HO** (in Cantonese): *President, an incident actually occurred in the small hours of 2 July. It has been clearly shown in a complaint received by me about the incident that there were witnesses. Immediately after taking away or arresting some protesters, the police asked a number of reporters who were holding cameras to cover news on the scene whether they had press cards and took away two young people who kept taking photographs with the cameras in their hands and were obviously covering the news. Although the two of them expressed their hope to the police that they be let go, saying they did not have their press cards with them but could produce the cards later, the police refused to let them go. By the time they were taken to a police station, it was already 2 am. Although one of these two reporters finally managed to produce an identity document at 4 am showing that she was a reporter of the New Tang Dynasty Television, she was still detained until 11 am. During the detention, the two reporters were required by the police to take photographs and fingerprints and even be bound over before allowing them to leave. Now the Commissioner of Police is even saying that no arrest of reporters has been made. I think his*

*remark is a lie. May I ask the Secretary whether or not there is a new policy specifying that reporters, if they do not carry press cards with them, will be arrested and prosecuted as if they are protesters?*

**SECRETARY FOR SECURITY** (in Cantonese): President, the arrests in Central were made by the police under highly transparent circumstances in the small hours of 2 July, when a lot of electronic media were on the scene. In fact, a lot of media had sent their journalists to the scene to cover the news for detailed reports. In fact, two briefing sessions were held by the Police Public Relations Branch on that day to inform the media of the latest news. Before the arrests, the police already made continuous appeals to the protesters to leave the scene. The protesters were arrested on the ground that they were suspected of causing obstruction in public places and unlawful assembly. In the end, only those protesters who were sitting on the ground and refused to leave were arrested by the police. The arrests had nothing to do with their professions. No reporter who was covering news was arrested by the police on that day. One of the arrested persons, though claimed to be a reporter, were subsequently released with other arrested people.

I would like to again reiterate here that the police always respect the freedom of the press and news coverage. There are also guidelines specifying that police officers on the scene must strive to complement the work of the media on the basis of mutual understanding and accommodation and the police will, on the premise of not compromising the police operations and judicial proceedings, be committed to rendering assistance to the media to facilitate their coverage of news.

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

**MR ALBERT HO** (in Cantonese): *President, my supplementary question just now is very simple: If someone on the scene covers the news without carrying a press card, will he be treated by the Secretary as a protester?*

**PRESIDENT** (in Cantonese): Mr HO, are you emphasizing that he is covering the news?

**MR ALBERT HO** (in Cantonese): Yes.

**SECRETARY FOR SECURITY** (in Cantonese): We must distinguish clearly that if a reporter or an off-duty reporter participates in a protest, his identity is a protester.

## ORAL ANSWERS TO QUESTIONS

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

### Regulation of Conduct of Politically Appointed Officials

1. **MS CYD HO** (in Cantonese): *President, regarding the provisions in the Guidelines on Election-related Activities in respect of the Chief Executive Elections and the Code for Officials under the Political Appointment System on the participation in the Chief Executive elections by politically appointed officials, will the Government inform this Council:*

- (a) *given that at the Council meeting held on 29 June this year, a Member of this Council asked whether the Chief Secretary for Administration had deployed public resources of the Government to prepare for the Chief Executive electioneering campaign, and when I raised a supplementary question on whether the Chief Executive had asked the Chief Secretary for Administration or instructed anyone to ask the Chief Secretary for Administration if the website under preparation was the official website for the Chief Secretary for Administration or his own personal website, the Secretary for Constitutional and Mainland Affairs did not provide the required information, whether the authorities can provide a clear response in this regard because it is the responsibility of the Chief Executive to ensure that appointed officials follow all rules and regulations in*

*both official business and their private life; if after making the enquiries they have learnt that the website under preparation is an official website, whether the website has been produced by ePlus Communications Limited (ePlus), whether the service contract of web site production has been granted to ePlus through tendering, and of the fees charged by ePlus for this service as well as whether such fees are on a par with market prices; if ePlus has not charged fees that are on a par with market prices, of the channels through which the politically appointed official concerned has declared his interests;*

- (b) whether the authorities have set upper limits in monetary terms on the services, gifts, discounts and sponsorships received by politically appointed officials; if they have, of these upper limits; whether they have assessed if officials accepting such advantages without making declarations have contravened the Prevention of Bribery Ordinance or the Independent Commission Against Corruption Ordinance, and of the mechanism in place to examine if such advantages will give rise to any conflict of interest with their official duties; and*
- (c) of the existing mechanism to prevent politically appointed officials from requiring their civil servant subordinates, in particular those in the Administrative Officer or Information Officer grades or directorate civil servants, to participate during or outside office hours in private activities for promoting the personal image of politically appointed officials, including their participation in the preparatory work for electioneering activities?*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President,

- (a) Regarding the incident reported by the media earlier, the Chief Secretary for Administration has already issued a statement



emphasizing that in the use of government resources he had fully complied with relevant government regulations.

There is only one official website for the Chief Secretary for Administration, that is, <[www.cso.gov.hk](http://www.cso.gov.hk)>. The Information Services Department (ISD) is the webmaster of the website, providing website design and technical support in relation to the official duties and responsibilities of the Chief Secretary for Administration. The HKSAR Government has nothing further to supplement in this regard.

- (b) The "Code for Officials Under the Political Appointment System" (the Code) stipulates that as public servants employed by the Government, politically-appointed officials (PAOs) are subject to the relevant provisions in the Prevention of Bribery Ordinance and the Independent Commission Against Corruption Ordinance, and shall if necessary seek guidance from the Chief Executive as to the acceptance and retention of gifts, advantages or other benefit.

In addition, PAOs are required to keep a register of gift, advantage, payment, sponsorship (including financial sponsorships and sponsored visits) or material benefit received by them or their spouses from any organization, person or government other than the Government which in any way relates to their office as PAOs. The register will be made available in the bureau/office served by the official concerned for public inspection on request.

- (c) The Administration has set out clear regulations and guidelines for civil servants and non-civil service contract staff participating in political activities. Officers who are particularly susceptible to accusations of bias, namely Directorate Officers, Administrative Officers, Police Officers and Information Officers, are prohibited from participating in electioneering activities. There is no objection in principle to other civil servants and non-civil service contract staff to participate in electioneering activities in their private capacity provided that it does not give rise to any conflict of interest with their official duties. Officers concerned should also comply with the Civil Service Regulations on outside work. A civil servant

who commits a disciplinary offence could be liable to disciplinary action. The Code also stipulates that PAOs shall not require or influence civil servants directly or indirectly to act in any way which is in breach of any Government Regulations including Civil Service Regulations.

**MS CYD HO** (in Cantonese): *The Secretary has made it very clear this time around that there is only one official website for the Chief Secretary for Administration and the ISD response is also very clear. However, the Chief Secretary's response is very vague. In the response to this incident in June, he said, "From time to time I gauge the views of various parties on how to make use of information technology to enhance communication with the public, as well as matters involving public perception and personal image."*

*However, the Chief Secretary still owes us a clear response that it is only a private website. If the Chief Secretary can make such a statement, the incident will be clarified and he will not give the public an impression that he has mixed up official duties with private affairs and there is ambiguity about the use of resources.*

*I have this question for the Secretary. Why has the Chief Executive not made enquiries with the Chief Secretary in order to get confirmation from him personally that it is a private website? What does he worry about? Why is he reluctant to make a clarification? Why has the Chief Executive failed to fulfill his responsibility of maintaining the credibility of the Government and allowed an official appointed by him to continue to muddle up official duties with private affairs?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, first of all, regarding the official website of the Chief Secretary's Office, I actually gave an unequivocal response to an oral question in the Legislative Council two weeks ago. The Government will certainly give replies on official matters to this Council. But the SAR Government will not comment on matters other than that.

However, I can add that the Chief Executive will certainly handle all relevant issues in accordance with the Code. He will also ensure that our Secretaries of Department, Bureau Directors and other PAOs will act in accordance with the Code.

**DEPUTY PRESIDENT** (in Cantonese): Ms HO, which part of your supplementary question has not been answered?

**MS CYD HO** (in Cantonese): *Although the Secretary said that the official .....*

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

**MS CYD HO** (in Cantonese): *Although the Secretary said that no comment would be made on the officials' personal activities, the matter concerned is related to the credibility of the entire Government and PAOs. So, I asked the Secretary just now why the Chief Executive has failed to discharge his responsibility in upholding the credibility of the Government and allowed officials appointed by him to continue to muddle up official duties with private affairs.*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, as I said earlier, the Chief Executive will certainly handle the matters in accordance with the Code to ensure that the Code is observed by officials.

**MRS REGINA IP** (in Cantonese): *Deputy President, I would like to ask the Secretary the following question. According to the arrangement of the Government, the Chief Executive and the three Secretaries of Department, who*

*are the SAR's highest-ranking officials, are all provided with official residences, in which they are served by cooks, housekeepers and many other employees, by the Government. In addition, they are entitled to a non-accountable entertainment allowance, which may be claimed without supporting documents. In other words, they are supported by the Government which has provided them with food and accommodation. The reason is that all of these high-ranking officials' time belongs to the Government, except holidays stipulated in the contracts.*

*Under such circumstances, will the Government and the Chief Executive allow officials at the Secretary of Department level to engage in outside work in their spare time? Is participation in private election-related activities regarded as outside work? What is the view of the Chief Executive?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, Mrs Regina IP knows very well the system of the Government. The Chief Executive and the three Secretaries of Department are provided with official residences which are manned with staff responsible for housekeeping. Furthermore, they often have to host some official entertainment activities. Hence, the arrangement ties in with their capacity as the top officials of the Government.

All Secretaries of Department, Bureau Directors and political appointed colleagues have taken up wide-ranging duties, providing all-weather and full-time services. Even if they are on leave, they have to cancel the vacation and return to Hong Kong to offer help in case of emergency.

Should any Secretaries of Department or Bureau Directors wish to stand in an election, such as the Chief Executive election or the Legislative Council election, they should resign from their office before announcing their formal participation. This is the provision of the law which will be observed by us.

**DEPUTY PRESIDENT** (in Cantonese): Mrs Regina IP, which part of your supplementary question has not been answered?

**MRS REGINA IP** (in Cantonese): *The Secretary has not answered what the Chief Executive will do if an official at the Secretary of Department level, regardless of which one, has secretly participated in an election, including a beauty pageant?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, the Chief Executive will certainly deal with all matters in accordance with the Code, while the Secretaries of Department and Bureau Directors have to be dedicated and diligent.

Secondly, if any Secretary of Department or Bureau Director has decided to stand in an election, he is required to resign from office in accordance with the law.

**MR LEE CHEUK-YAN** (in Cantonese): *I wonder whether one will be regarded as being dedicated if one has decided to participate in a beauty pageant.*

*Deputy President, the Secretary is recently fond of talking about plugging the loopholes repeatedly. Clearly there is a loophole here. What is this loophole? The loophole is that civil servants cannot participate in electioneering activities and the stipulation is very clear. I mean four categories of specified civil servants rather than all civil servants. One of these categories is Information Officers who are not allowed to participate in electioneering work. The reason is very simple. I believe it is because they have established public-duty relations while carrying out their official duties and it will be unfair if they make use of such public-duty relations in their electioneering work. However, where is the loophole? The loophole is that non-civil service contract staff in the ISD are not subject to regulation. As a result, someone has engaged in the production of a private website outside office hours. Is this a loophole?*

*Even though non-civil service contract staff have also established a lot of public-duty relations, they can participate in electioneering work. Will the Government plug this loophole? Furthermore, does the Government admit that this is a loophole? If it does not, I would be really puzzled. What is the difference between non-civil service contract staff and civil servants in this*

*aspect? They have also established public-duty relations which is the same as that of civil servants. Therefore, it is absolutely a loophole. May I ask the Secretary whether this is a loophole?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, we have two considerations in this regard. First of all, Mr LEE has highlighted the specific restrictions on four types of civil servants, namely Directorate officers, Administrative Officers, Police Officers and Information Officers. In view of the nature of the duties of these four types of civil servants, we consider it appropriate to impose special regulation on them as this will ensure that the system as a whole will operate more smoothly.

As for other civil servants or non-civil service contract staff, they have the personal freedom and rights to participate in political activities. Therefore, they are not placed in the regulatory ambit. It is appropriate and there is no loophole.

**MR LEE CHEUK-YAN** (in Cantonese): *The Secretary has not answered my question concerning the fact that they have also established public-duty relations in carrying out their duties. The Secretary has not answered this point .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr LEE, the Secretary has replied that there is no loophole. If there is any dispute over this, it may be more appropriate to pursue the matter on other occasions.

**MR ALAN LEONG** (in Cantonese): *Ms Cyd HO just now queried why the Chief Executive had not made enquiries with the Chief Secretary to find out whether it was his personal website. Is it because if the Chief Secretary has really made a personal website for running in the Chief Executive election and he has not resigned from the office of Chief Secretary, he will be in breach of the law? Is it true that the Chief Executive has not followed up the matter because he does not want to cause embarrassment to the Chief Secretary, for fear that the Chief Secretary may have allegedly violated the law?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, if any Secretaries of Department or Bureau Directors have decided to run in an election, they should publicly announce their decision and resign from office. However, if they have not yet made any such decision, they are not required to do so.

**MS CYD HO** (in Cantonese): *Deputy President, according to the ordinance regulating elections, a volunteer who has provided service related to his career will be regarded as providing benefits to others and relevant professional fees should be counted and declared as expenses in an election campaign. Will the Chief Executive place services such as the pilot versions of the personal websites of government officials, website design or other relevant voluntary services under the regulation of the ordinance regulating elections and include them in the Code?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I believe Ms Cyd HO's concern is another matter.

The issue can be viewed from two levels. The Chief Executive will certainly have to ensure that PAOs act in accordance with the Code. Under the Code, each PAO is required to keep a detailed record of gifts, souvenirs and sponsorships which the PAO and his/her spouse have received. If Secretaries of Department, Bureau Directors and PAOs have accepted these gifts in their official capacity, they should make relevant disclosure.

As for the second level, Ms HO is speculating that some principal officials will run in the Chief Executive election. In fact, any candidate, be he a principal official or other individual, should make full declaration of expenses incurred or donations received during the election campaign, including the period before and after the election campaign, and during the period when the election is held, as long as these are related to the election. Hence, all candidates, be they principal officials or former principal officials or other individuals, are required to observe the provisions of the Elections (Corrupt and Illegal Conduct) Ordinance. And services provided by volunteers are of course included. The value of volunteer services shall be counted towards election donations in accordance with the Ordinance and the electoral guidelines.

**DEPUTY PRESIDENT** (in Cantonese): Ms HO, which part of your supplementary question has not been answered?

**MS CYD HO** (in Cantonese): *Deputy President, the Secretary has thought too deeply. In fact, I did not mention the website for election purpose produced by the Chief Secretary. I just asked, concerning the Code, whether the Chief Executive would .....*

**DEPUTY PRESIDENT** (in Cantonese): Ms HO, which part of your supplementary question has not been answered? Please simply point out which part so that the Secretary can answer it.

**MS CYD HO** (in Cantonese): *I have just asked the Secretary whether the Chief Executive will bring the Code on a par with the ordinance regulating electoral affairs by requiring that free professional services be counted as a kind of interest on which declaration should be made. The Secretary has thought too deeply.*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I have not thought too deeply because I know very well Ms Cyd HO's thinking in this question. Therefore, I have answered it in two levels. Of course, the code of practice for principal officials and PAOs has set out clearly what should be declared and it will suffice for the officials to make declaration in accordance with the system.

**MR ABRAHAM SHEK** (in Cantonese): *Deputy President, I would like to ask the Secretary the following question. At present, Secretaries of Department are assisted by civil servants in carrying out all kinds of official duties. Now the question is whether or not the official concerned has declared his participation in the election. What is the problem if he is just performing the duties as a Secretary of Department rather than engaging in an election campaign?*



**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, there is wide media coverage in Hong Kong concerning the issue every day and there are also speculations concerning when potential candidates will officially declare their participation in the next Chief Executive election. However, up to now, no one has formally made such announcement. So, as of today, principal officials are still performing their duties and acting in their official capacity. As for other potential candidates, they may be engaging in pre-election preparatory work.

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

### **Provision of Annuity Plans Under MPF Scheme**

2. **MR LEE CHEUK-YAN** (in Cantonese): *Deputy President, under the existing Mandatory Provident Fund (MPF) Scheme, if scheme members wish to withdraw the accrued benefits from their MPF accounts when they reach the age of 65, they may do so only by withdrawing all the benefits in one go. In this connection, will the Government inform this Council whether the authorities will conduct a study on requiring MPF trustees to provide annuity plans for scheme members, so that the latter can choose to inject all or part of the accrued benefits into such plans and withdraw a fixed amount of money on a monthly basis upon retirement, thereby ensuring a stream of stable income for their retirement; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, currently, under the Mandatory Provident Fund Schemes Ordinance (MPFSO) and the Mandatory Provident Fund Schemes (General) Regulation, scheme members may withdraw the benefits accrued from their mandatory contributions in a MPF scheme when reaching the retirement age of 65, regardless of whether they are employed. The MPFSO also allows scheme members to postpone the withdrawal of accrued benefits in a MPF scheme after reaching the age of 65. Upon withdrawal of their accrued benefits, scheme members may choose to invest in a variety of investment or retirement income products which are available in the market, including annuity plans referred to in the question.

The Mandatory Provident Fund Schemes Authority (MPFA) has established a working group to review the modes of withdrawal of MPF accrued benefits. In the review, the MPFA will consider the operational experience of the MPF System in the past 10 years and the views gathered; make reference to the withdrawal options and experiences of overseas jurisdictions; and study various withdrawal options, including the present lump-sum payments arrangement, programmed or phased withdrawals, annuities as well as combination of any of these options, and so on.

The MPFA will fully consider the practical operating situation of the MPF System in Hong Kong, the overseas experiences in implementing different withdrawal options and stakeholders' views. The MPFA plans to submit its preliminary recommendations to the Government within this year.

We keep an open mind on the modes of withdrawal of MPF benefits. The primary consideration is that it can meet the needs of scheme members to achieve better retirement protection. We will liaise closely with the MPFA on the review and take appropriate follow-up actions regarding the review results, including consultation with the Panel on Financial Affairs and listening to public views.

**MR LEE CHEUK-YAN** (in Cantonese): *Deputy President, I am concerned about this issue mainly because more often than not, the market might happen to plunge when workers withdraw their MPF benefits at the retirement age of 65. As a result, the benefits in their MPF accounts might shrink by 30% or 40%. Such things had happened in the past. Hence, the workers will suffer great losses if they are required to withdraw their MPF benefits immediately.*

*Although it is stated in the main reply that the withdrawal of MPF benefits can be postponed, retired workers need to withdraw their MPF benefits immediately in order to meet their living expenses, or else they will have no money to spend as they have no income. My concern is that workers should be offered a choice to withdraw part of their MPF benefits with the remaining part to be withdrawn in instalments or in the form of annuities, so that they can enjoy greater protection in their retirement life.*

*I certainly welcome the establishment of a working group and the Government's open attitude. However, may I ask the Government, given its*

*remarks that it will keep an open mind and the government official also consider this a good direction, will the government official act more proactively by participating in the MPFA's working group to express the Government's views so that the matter can be tackled expeditiously, for the MPFA's recommendations might not be accepted by the Financial Services and the Treasury Bureau? Therefore, we hope that the Government and the MPFA can establish a joint working group. What is the attitude of the Bureau? It should support phased withdrawals more proactively rather than merely keeping an open mind.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, relevant studies have been conducted on, among others, different modes of withdrawal. I can say that insofar as these studies are concerned — including the study on different modes of withdrawal, as I mentioned in the main reply just now — we are proactive and open-minded.

Regarding the main reply just now, I would like to add one more point. Under the existing arrangement, when a scheme member reaches the retirement age of 65, he may choose, if his financial condition permits, not to immediately withdraw his accrued MPF benefits if the market happens to fluctuate and wait until the market improves. I understand that the Member suggested in his supplementary question that scheme members be allowed to withdraw part of their MPF benefits and keep the remaining benefits as investment. In this respect, we will take proactive actions to follow up the matter with the MPFA. This is also one of the directions for the studies.

**MR LEE CHEUK-YAN** (in Cantonese): *Will the Secretary join the working group? The matter can be dealt with more speedily with the direct participation of the Bureau.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, there has been extremely close co-operation between the Financial Services and the Treasury Bureau and the MPFA.

**MR WONG KWOK-HING** (in Cantonese): *Deputy President, the MPFA hinted last year that a "quasi-free choice" MPF arrangement would be implemented in*

*the first half of this year but later said that its wish could not be fulfilled because the legislation related to MPF intermediaries had failed to catch up.*

*If the health of an employee develops a sudden change when he is still making MPF contributions, such as — to put it badly — suffering from cancer, or he needs a sum of money to help the family because of a sudden change in the family, the employee still needs to wait until he reaches the age of 65 before he can withdraw his MPF benefits, as the option of a "quasi-free choice" scheme has not yet been offered. The condition of the employee is therefore extremely miserable.*

*May I ask the Secretary through the Deputy President what ways there are to help these wage earners? Can the Government provide assistance to them should they need to withdraw their MPF benefits because of an urgent and sudden change or their family or personal needs? Under the existing requirement, it is impossible for wage earners to use their MPF benefits to meet urgent needs because they are required to produce various kinds of documentation proof and meet unreasonable requirements. Can this situation be improved?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, I would like to clarify that the arrangement for the "quasi-free choice" and early withdrawal are entirely different. I must make it clear first.

The thrust of Mr WONG Kwok-hing's supplementary question is: Can MPF contributors withdraw their accrued benefits in times of emergency? Insofar as the present situation is concerned, our arrangement is that MPF contributors can withdraw their accrued benefits earlier only under certain special circumstances, such as leaving Hong Kong for good. As for the question of whether scheme members are allowed to withdraw part of their accrued benefits earlier under other circumstances, such as suffering from critical illnesses, this is also one of the directions for study by the MPFA working group. In other words, the working group will study whether scheme members could be allowed to withdraw their benefits prematurely under other circumstances.

However, with respect to this point, I would like to point out that there is one thing we need to consider and it is also understood by everyone — the MPF itself is a retirement scheme. If employees wish to withdraw their benefits prematurely, their future retirement arrangements will be affected. Certainly, I understand that the Member has special reasons to raise this supplementary question. Hence, the MPFA will also conduct studies in this respect.

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

**MR WONG KWOK-HING** (in Cantonese): *He has not answered my supplementary question. I referred to emergencies. The present situation is that there is an urgent need, but the Government does not sense the urgency.*

**DEPUTY PRESIDENT** (in Cantonese): Mr WONG, the Secretary has already replied that studies would be conducted.

**MR WONG KWOK-HING** (in Cantonese): *He has not replied as to how emergencies will be handled.*

**DEPUTY PRESIDENT** (in Cantonese): He said that studies would be conducted by the working group.

**MR TAM YIU-CHUNG** (in Cantonese): *Let me help by asking a question. Regarding the situation described by Mr WONG Kwok-hing just now, similar cases have indeed happened before. It has been reported in newspapers that some employees needed to use their MPF benefits for various reasons and so they claimed to the MPFA that they would leave Hong Kong for the Mainland and cease working in Hong Kong, in order that they could withdraw their MPF benefits. May I ask whether or not the number of such cases is large and the*

*number of people who have been penalized? Does the Secretary have information in this respect?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Is the Member talking about the claim made by some MPF contributors that they would leave Hong Kong but had not done so, or other circumstances? As today's question has nothing to do with this, I do not have such figures on hand for the time being. However, I can follow up this matter again and provide the supplementary information to Members after the meeting. (Appendix I)

**DR PAN PEY-CHYOU** (in Cantonese): *Deputy President, I am very pleased to hear the Secretary say that a more comprehensive review will be conducted on the modes of withdrawal of MPF benefits. We have recently examined the modes of withdrawal of central provident fund benefits in some other countries. In one of the cases, should central provident fund holders wish to use some of their benefits before retirement for investment, such as purchasing properties or designated safe investment products, like sovereign bonds, they are allowed to do so in certain countries. Will the Government take these options into joint consideration in its review of the use of MPF benefits to be conducted later, so that MPF scheme members can have more choices?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, as pointed out in the main reply just now, I will, having regard to Hong Kong's situation, the contributory arrangements under the MPF schemes, and so on, study whether the different modes of withdrawal are practicable.

I would like to point out here that it is a fact that the MPF contribution rates in Hong Kong are far lower than the rates of many similar provident fund contributions in overseas countries. Employees in many overseas places might be allowed to withdraw part of the benefits in their MPF or central provident fund accounts for purchasing properties or making other arrangements because, generally speaking, the rates of contributions made by employers and employees

while the employees are still working are much higher than those in Hong Kong, and this gives them room to make other arrangements.

As I pointed out in my main reply, given Hong Kong's situation, we will, having regard to the existing system and the retirement needs of employees, consider and study ways to enhance the flexibility of the modes of withdrawal. We will undertake work in this respect.

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

**DR PAN PEY-CHYOU** (in Cantonese): *I wish to ...*

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

**DR PAN PEY-CHYOU** (in Cantonese): *The Secretary has not specifically responded to the situation mentioned by me, that is, the withdrawal of part of MPF benefits for investment. He has not answered whether or not the Government will review and consider this kind of options.*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I can hardly give a reply today in respect of a certain area to state that whether the Government will work in this direction. Nevertheless, a comprehensive review will be conducted.

**MR WONG KWOK-HING** (in Cantonese): *Deputy President, I certainly understand that the "quasi-free choice" scheme and withdrawal in emergency situations are two separate issues. However, as I pointed out in my question just now, the Government originally said that the "quasi-free choice" scheme would be implemented in the first half of this year, but now it is still nowhere in sight.*

*And then, the authorities said that it would study the case of withdrawal in emergency situations, but there is no timetable.*

*My question now seeks to follow up the first part of my supplementary question just now concerning the enactment of legislation on the regulation of intermediaries in connection with the "quasi-free choice" scheme. When will the Secretary table the bill to the Legislative Council for our discussion? I have read the list of the bills to be read the First and Second time on the Agenda today and found that a number of bills that will take effect in the next session have already been tabled to this Council. However, I have not seen the tabling of the bill relating to the regulation of MPF intermediaries for First Reading.*

*Hence, I would like to put this question to the Secretary through the Deputy President: When will the bill be tabled to this Council for First Reading and will the Secretary undertake to do so within this year?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, I certainly know that Mr WONG Kwok-hing understands the difference between the two. However, the general public might probably find it confusing when they hear these two issues, thinking that they might be related. So, I have to point this out in my reply.

Concerning the arrangement for the Employee Choice Arrangement (ECA), or the "quasi-free choice" MPF scheme arrangement, efforts are being made in two respects: to enact legislation on regulation of MPF intermediaries on the one hand and making arrangement for the systems on the other. As the ECA involves such a huge scope, many accrued benefits might need to be transferred from one trust corporation to another, hence necessitating system arrangements. Work in this respect is already in progress. As for the legislative process, we already briefed the Finance Committee of the Legislative Council on the legislative proposals in April. The bill is expected to be tabled to the Legislative Council in 2011 with a view to completing the legislative process in 2011-2012.

**DEPUTY PRESIDENT** (in Cantonese): Third question.



**Use of Vacant Government Sites**

3. **MR CHAN HAK-KAN** (in Cantonese): *Deputy President, in 2006, the authorities planned to reserve a site for the construction of a centralized poultry slaughtering centre (PSC), and they first proposed to use the site near Shek Wu Hui Sewage Treatment Works in Sheung Shui and then proposed the site in the vicinity of Fu Tei Au Tsuen next to Man Kam To Road, which cover an area of 10 500 and 15 000 sq m respectively, but subsequently, as the risk of avian influenza in Hong Kong was kept at a low level, the Secretary for Food and Health announced shelving the centralized PSC project in June last year. To date, the aforesaid two sites have been left vacant for more than five years; and it has been learnt that at present, there are also other sites which are left vacant due to changes in policies or shelving of works projects. In this connection, will the Government inform this Council:*

- (a) *whether at present it has any specific short-term and long-term plans to use the aforesaid two sites; if it has, of the details; if not, the reasons for that;*
- (b) *given the keen demand for public housing from residents of the North District in the New Territories, whether it will consider constructing public rental housing (PRH) at the aforesaid sites or reserving them for Home Ownership Scheme (HOS) flats which may be constructed in the future; if it will, of the details; if not, the reasons for that; and*
- (c) *of the number of government sites which are vacant at present due to changes in policies or shelving of works projects; the respective areas of the sites involved and the districts in which the sites are located; of the specific plans it has in place to optimize the use of such vacant sites?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, a basic part of the work of the Development Bureau in management of land resources is the provision of land to meet the current and future need of bureaux/departments (B/Ds) for implementing the policies of bureaux and achieving their policy objectives. In this regard, the Planning Department

(PlanD), as an executive department of the Development Bureau, makes reference to the Hong Kong Planning Standards and Guidelines and takes account of the land requirements put forward by B/Ds, in designating the necessary land uses of suitable sites on Outline Zoning Plans (OZPs) under the mechanism of the Town Planning Ordinance (TPO). Given the broad nature of land uses on OZPs and that land uses of most sites reserved for implementation of public policies are always permitted in "Government, Institution or Community" (G/IC) zones, the PlanD will normally designate adequate land to be zoned "G/IC" on OZPs to meet the current and future land requirements of B/Ds or institutions.

I would like to point out that land is a precious resource. To optimize its use, the PlanD reviews land use planning on OZPs from time to time. For instance, in view of the restructuring of Hong Kong's economy, the PlanD has for years rezoned a large number of industrial sites for other uses. In recent years, the PlanD has completed another round of review on "Industrial" sites and proposed a gradual rezoning of some 30 hectares of land for "Residential" use with a view to increasing housing land supply.

As for sites zoned "G/IC", the PlanD from time to time reviews with the relevant B/Ds the need to retain those sites reserved for their use. If a site is no longer needed due to a change in policy or implementation plan, the PlanD will consider whether it is suitable for use by other B/Ds and will follow up as appropriate. If need be, the PlanD will, in accordance with the TPO, seek to amend the zoning of the site.

Besides, if a reserved site is not needed for immediate use, the Lands Department (LandsD) will consider allowing the works departments or their contractors to use it as temporary works site or construction material storage yard, or rent it out by way of short-term tenancy, such as for operation of temporary car parks, or lease them at nominal rent to non-profit or local organizations for community purposes, so as to optimize land use.

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

- (a) The site near Shek Wu Hui Sewage Treatment Works in Sheung Shui covers an area of about 1 hectare. It was once contemplated for use as a centralized PSC by the Government. It is currently zoned for "Industrial" use on the Fan Ling/Sheung Shui OZP. The

LandsD plans to lease the site by way of short-term tenancy. Possible uses include a fee-paying public car park, goods storage yard, bus depot, plant nursery, and so on. The term may be one to three years depending on the use. The PlanD is considering whether the site should continue to be zoned for "Industrial" use in the long run.

The other site in the vicinity of Fu Tei Au Tsuen next to Man Kam To Road covers an area of some 1.3 hectares. It is zoned "Other Specified Uses" annotated "Poultry Slaughtering Centre" on the draft Fu Tei Au and Sha Ling OZP. As it is no longer necessary for the Food and Health Bureau to reserve the site for use as a centralized PSC, the PlanD is contemplating the long-term use of the site. At present, the LandsD does not have any plan to lease the site under short-term tenancy.

- (b) Generally speaking, apart from land requirements, a number of environmental factors have to be taken into account in considering the rezoning of sites. The "Industrial" site in Shek Wu Hui, Sheung Shui is now not suitable for rezoning to "Residential" use given the odour problem arising from the Sewage Treatment Works. As for the site in Man Kam To north of Indus River and designated specifically for a centralized PSC, sites in its vicinity are mainly zoned for "Open Storage" or "Port Back-up" use, for open storage of goods that cannot be stored in ordinary warehouses, and for the provision of services for cross-border trade, such as vehicle repair workshops, warehouses (except dangerous goods stores) and container vehicle parks. The area is subject to environmental and noise impact given its neighbouring "Open Storage" and "Port Back-up" uses, rendering the site unsuitable for residential use. Man Kam To Road is also a major cross-border link in the area which is not yet served by a comprehensive transport network. Man Kam To Road is still the major route for getting in and out of the area. Residential development would bring additional traffic to the area, thereby increasing the traffic load of Man Kam To Road and possibly raising traffic and safety concern for the residents. Besides, the site is far away from the town centre of Fan Ling/Sheung Shui. Should the site be used for residential

development, provision of infrastructure (such as water, electricity, sewage pipes, and so on) and community facilities will be relatively difficult.

- (c) As mentioned in the preamble, in order to optimize land use, the PlanD from time to time reviews with B/Ds concerned the sites reserved for them, in order to better meet the land requirement of various B/Ds. Besides, if the reserved sites are not needed for immediate use, the LandsD will consider and arrange temporary uses. These two measures aim to optimize land use, and prevent as far as possible the problem of sites being "left vacant due to changes in policies or shelving of works projects" as mentioned in the question, or that of land resources not being put to appropriate use in this respect.

In support of the work of the Steering Committee on Housing Land Supply chaired by the Financial Secretary, the Development Bureau and the PlanD have stepped up efforts to review land requirements with B/Ds which have reserved sites for future development in a more proactive manner with a view to more effectively releasing sites for housing or other development.

We do not maintain specific record of sites which are left vacant due to changes in policy or implementation plan. Currently, vacant government sites/properties include mainly former government staff quarters, vacant school premises and sites that are no longer needed for "G/IC" use. They are located in different districts in the urban area and the New Territories, of which some 39 hectares are committed or potential sites for housing development, and some 19 hectares are committed or potential sites for "G/IC" or other uses. The relevant authorities are taking the necessary follow-up actions.

**MR CHAN HAK-KAN** (in Cantonese): *Deputy President, there are keen demands in the community for the production of HOS and PRH flats, but the Permanent Secretary for the Transport and Housing Bureau has said that it would take seven years to produce PRH and HOS flats. The public is not convinced by this view.*

*Last week, the Chief Executive inspected a certain site in Fo Tan and he hoped to change the land zoned for "Industrial" use into land for HOS or PRH construction. But if this is really the case, certain procedures in town planning may have to be taken and an even longer time may be required. Can the Secretary tell us how much time is required to complete the town planning procedures if a site for "Industrial" use is changed into one for "Residential" use? Will two or more years be needed on top of the seven years as claimed by the Government, that is to say, the people will have to wait for 10 years?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, I believe Mr CHAN will know that there are certain prescribed procedures to follow if one wants to launch housing construction on a piece of land. And for that matter, I do not think any generalization can be made and it will depend on the nature of the site and requirements in other aspects. Put simply, land which we can use may be divided into "raw" or "ripe" land. Mr CHAN has expressed his special concern about how land use can be changed and what related procedures are involved. In this regard, approval of the Town Planning Board (TPB) will have to be obtained.

Under the Town Planning Ordinance, the TPB will have to follow certain very stringent procedures of consultation. Therefore, the length of time required will depend on how strong the voices of opposition are reflected in the consultation. But there are also encouraging examples in this regard. I can give one or two such examples for illustration. In 2009, we undertook an assessment of land for industrial use and, as I have just said, we announced in last October that there were about 30 hectares of land in the industrial or commercial areas suitable for conversion into land for "Residential" use. We are confident that in the near future, we can offer two lots which can provide 1 500 residential units for sale. These two lots are situated in Tai Wo Hau, Tsuen Wan and Tung Tau, Yuen Long. They can be changed from "Industrial" use into "Residential" use and they will be rezoned as "Comprehensive Development Areas". The project is now at the town planning stage and since there was no opposition when consultation was undertaken at the district level, so the town planning procedure in respect of these two sites can be proceeded with in a faster manner.

Since we have the confidence, we have placed these two lots of industrial land into the land sales scheme for the year 2011-2012, and at the beginning of next year, they will be sold for the building of flats with limited floor area. So, Mr CHAN, this example can prove that the town planning procedure can be very efficient and it may just take a year and a half from identifying a site to placing it for sale in the market.

**MR CHEUNG HOK-MING** (in Cantonese): *Deputy President, it is commonly felt in the community that land for public housing is in shortage. When the Secretary was giving a reply to the main question raised by Mr CHAN Hak-kan, she held that with respect to the two sites mentioned by Mr CHAN, they could not be changed into residential land. May I ask the Government, with respect to the two new development areas, that is, the North East New Territories New Development Area and the Hung Shui Kiu New Development Area for which planning has just begun, whether the Secretary can tell us something about the proportion of public housing development in these two sites?*

*In addition, quite a significant part of the OZPs for the New Territories is classified as green belts and these green belts are in fact not country parks, and a large part of them is government land. Will the Government consider releasing these green belts for the production of more public housing on the premise that no disruption to the ecology will be caused?*

**DEPUTY PRESIDENT** (in Cantonese): Mr CHEUNG, you have in fact raised two supplementary questions. Please choose one of them.

**MR CHEUNG HOK-MING** (in Cantonese): *Would it be all right if I leave this to the Secretary?*

**DEPUTY PRESIDENT** (in Cantonese): The Rules of Procedure stipulates that a Member can only raise one supplementary question.

**MR CHEUNG HOK-MING** (in Cantonese): *Well, could the Secretary please answer the second supplementary?*

**DEPUTY PRESIDENT** (in Cantonese): Please wait for another turn if you wish to raise another supplementary question. In accordance with the Rules of Procedure, a Member may only raise one supplementary each time.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): The second supplementary question raised by Mr CHEUNG is about the issue of green belts. I can tell Mr CHEUNG here that over the past year the Steering Committee on Housing Land Supply headed by the Financial Secretary has taken active steps in re-examining land use in Hong Kong. So earlier on we decided to explore the possibility of undertaking reclamation in waters beyond the Victoria Harbour and development of caverns. These will hopefully release land now occupied by public facilities for the production of flats.

Our work in the next step will be to handle the green belts which are a concern of Mr CHEUNG. These are green belts found in the OZPs. We must be very careful in undertaking this kind of work in order to avoid causing strong reactions from the green groups. We will select certain green belts which do not have much greening value and which are situated in the peripheral areas of the new development areas. We will study whether the land can be released for housing development. I hope we can give an account of the work done in this regard to the Development Panel in the following year.

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

**MR CHEUNG HOK-MING** (in Cantonese): *Deputy President, I wish to follow up my supplementary question.*

**DEPUTY PRESIDENT** (in Cantonese): You are not following up. Which part of your original supplementary question is not answered by the Secretary?

**MR CHEUNG HOK-MING** (in Cantonese): *The Secretary has talked about one year's time, I wish to ask her how large is the area involved?*

**DEPUTY PRESIDENT** (in Cantonese): This is a follow-up. I cannot permit you to ask it. Which part of your original supplementary question has not been answered? If you wish to follow up, please raise the question on other occasions or wait for another turn to ask it again.

**MR ABRAHAM SHEK** (in Cantonese): *Deputy President, Mr CHAN has asked about a matter and the Secretary has also given a clear reply and that is, it will really take some time for "raw" land to become "ripe". It is not a case of conjuring up a piece of land by magic. But land is in very short supply now. It applies in particular to land for the production of HOS and PRH flats. This has become a big social problem. Secretary, I would say that anything can be done if you are determined to do it.*

*Now there is much "ripe" land on top of the stations along the West Rail. I think the Government may decide not to put up the land for sale in the market and instead, it may choose one or two sites for the production of HOS flats. Has the Government ever thought about this? Although by doing so the Government may lose a certain amount of revenue from land sales, the land concerned is government land and not that of the MTRCL. Deputy President, I would like to declare that I am a non-executive director of the MTRCL. May I ask the Secretary whether consideration will be given to setting aside some land on top of the West Rail stations? By doing so, we do not have to wait for seven years and the problem can be solved at once.*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Mr SHEK, I feel flattered. This is not a decision I can make. As I said in the main reply just now, the main duty of the Development Bureau is to provide land resources to tie in with the policy objectives of the relevant bureaux. What I can say is that the Chief Executive has heard the demands in society for the production of HOS flats and is seriously considering the issue. As far as I know, the Chief Executive plans to address the demands of the people in his next policy address. About the land on the top of the stations of the West Rail which is a concern expressed by



Mr SHEK, Members may know that we have been working very hard recently in the hope of releasing land for housing production. We have devised new measures to comply with the guidelines on inflated flats. We have also changed the tendering arrangements in order to make the sale procedures simpler.

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

**MR ABRAHAM SHEK** (in Cantonese): *Deputy President, she has not answered my supplementary question. I mean that there is no need to wait for seven years and the problem we have now can be solved. These sites belong to the Government, not the MTRCL, and the Government .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr Abraham SHEK, the Secretary has given a reply.

**MR ABRAHAM SHEK** (in Cantonese): *If the Government has the determination to solve this problem.*

**DEPUTY PRESIDENT** (in Cantonese): This is not something which the Secretary can decide.

**MR ABRAHAM SHEK** (in Cantonese): *It is not something which the Secretary can decide. But I am asking her, and she has to look at that the question from the perspective of the Government. This is a social problem and it does not matter which department .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr Abraham SHEK, please follow up your concern on other occasions. The Secretary has replied and said that it is not part of her portfolio.

**MR LEE WING-TAT** (in Cantonese): *The Secretary was right; this decision not to resume the production of HOS flats is not her decision but that of her superior, Donald TSANG, who alone resists the demand of a few million people and refuses to resume the production of HOS flats. I understand that. So I will not raise a question on that. However, before 1997, the Government used to formulate a long-term housing policy and it had devised a land supply policy which had a rolling period of five years. I have in recent years raised the point many times, that a steady land supply cycle should be devised so that people can know the amount of land supply for the current year, the following year, the third and fourth years and also the fifth. I also understand that the kind of land coming on stream in the fourth and fifth years tend to be more of a "raw" kind and that for the first two years would be "ripe" land, but at least we can know the cyclical supply of land and so the people would not have to scramble for the flats available in the market.*

*The case is like what is reported today in the Hong Kong Economic Times that the Government can present 180 hectares of land at any time. This is because people love to make estimations on the market situation. Deputy President, I wish to raise a question which is very specific. Has the Development Bureau ever considered resuming a land supply policy using five years as a rolling period? If this is not part of your portfolio and you cannot make a decision, then is it a decision that the Financial Secretary should make? I think this will prevent general members of the public from being at a loss as to what they should do and keep guessing this question of land supply.*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Mr LEE has on many occasions raised this point to us and we have considered seriously how the public and Members can have some idea about the future supply of land for housing. As a matter of fact, I have looked at the previous practice of using five years as a rolling period, but as the present cycle of land supply is very long, for example, for the land in the North East New Territories and the Hung Shui Kiu New Development Areas which Mr CHEUNG Hok-ming mentioned earlier, it will take eight to 10 years before the land concerned can be launched on the market. Therefore, devising a five-year plan may not be able to let the public know about the situation in the medium to long term. I know that Mr LEE Wing-tat will call a special meeting of the Housing Panel later this month. My colleagues and I

are sorting out the relevant materials and we hope to give an account of the situation of land supply in the medium to long term then.

For the short term, as Members can see, in our land sales scheme every year, we will not only talk about the situation for that particular year but also the land supply for the next few years. For example, after the land sales scheme for the year 2011-2012 is completed, Members will know that for the next couple of years, the sources of land supply will include further developments in Tseung Kwan O and land in Kai Tak will be launched on the market. So we are glad to share with Members our work in land supply with this very pragmatic approach.

**MISS TANYA CHAN** (in Cantonese): *Deputy President, on the situation of land supply, we also know that the Government, in particular the Development Bureau, is exploring various possibilities. Mention was made of green belts earlier. As the Secretary has said, an account of the situation will be given within one year, and she has pointed out clearly that consideration is being made to free the land surrounding the green belts. But we know that once this starts from the peripheral areas, then more encroachment on the core areas will happen. This is because there is always a boundary to a green belt. If the boundary is close to some urban developments or certain large development projects, then the area of the green belt concerned will dwindle. I am sure Members will recall the incident of the Tseung Kwan O landfill which happened last year and what was involved was only a country park, but due to the development projects next to it, the peripheral areas to the country park are no longer a green belt. May I ask the Secretary what kinds of criteria are used by the authorities to determine whether a green belt may be resumed for development purposes in future?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Let me do some explaining first. The land use as found in OZPs is general in nature and land with a high ecological value is usually reflected in the classification of the land in question. For example, they are classified as land for conservation, or land with special scientific value and they can be directly included into a statutory country park. This is vastly different from a green belt. It is true that certain land in a

green belt which has plants would be more important, but there are also some green belts which do not have too many plants, only that the site concerned is still zoned as a green belt. So we hope to complete the review within one year, instead of offering land in green belts for other kinds of development within one year's time. In this regard, we will base on the above criteria in our consideration. Actually, for those green belts found in the OZPs and which do not have too much vegetation or which have been in use before, they are called brownfield sites or formed sites. Another important point to note about this kind of land is that it is owned by the Government, that is, it is land in government green belts, instead of land in private green belts.

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

#### **Measures to Improve Fire Safety of Flat Units Divided into Separate Units**

4. **PROF PATRICK LAU** (in Cantonese): *Deputy President, the tragedy in which a No. 3 alarm fire broke out in a tenement building at 111 Ma Tau Wai Road in To Kwa Wan resulting in the death of four persons and an unborn child and 19 injured has aroused public concern again about the fire safety problem of flat units divided into separate units (commonly known as "sub-divided units"). Some members of the Subcommittee on Building Safety and Related Issues of this Council pointed out that as sub-divided units could meet the housing needs of certain people, they should not be totally banned, and that in order to safeguard the lives and properties of the public, the fire safety of sub-divided units had to be further enhanced. In this connection, will the Government inform this Council:*

- (a) *given that the fire service equipment in private residential units is not regulated by law at present, whether the authorities will consider introducing legislation to regulate the fire service equipment in sub-divided units converted from private residential units, so as to ensure that sub-divided units for letting or sale are subject to corresponding regulation as in the case of other small-sized rooms for letting which are regulated by law; if they will not, of the reasons for that;*

- (b) *as items of works commonly found in sub-divided units are gradually being included in the Minor Works Control System (MWCS) by the authorities, whether the authorities will expeditiously consider incorporating fire service equipment including smoke detectors, automatic sprinkler system and fire alarm system, and so on, in the MWCS to expedite the enhancement of fire safety in sub-divided units, thereby safeguarding the lives and safety of sub-divided unit tenants and their neighbours; if they will not, of the reasons for that; and*
- (c) *whether, apart from the Building Safety Loan Scheme and Building Maintenance Grant Scheme for Elderly Owners, the authorities will consider expanding other relevant subsidy schemes to provide loans or subsidies to owners of private residential units, including sub-divided units, in Hong Kong to encourage them to take the initiative to improve the fire service equipment in their units; and whether the authorities will consider strengthening the support provided by the Urban Renewal Authority (URA) under the Integrated Building Maintenance Assistance Scheme by enhancing its role in public education, thereby increasing the awareness among the owners and tenants of sub-divided units and the general public of fire safety in private residential units, including sub-divided units (for example, making use of 3D building design models to instil in them correct knowledge about building and fire safety); if they will not, of the reasons for that?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, sub-division of flat units, commonly known as "sub-divided units", has recently become an issue of serious concern among Members and the public. I replied to three oral and urgent questions in this Council about "sub-divided units" on 1 June and 22 June respectively. I have explained in my replies that "sub-divided units" are a very complicated problem, involving issues such as fire safety, building safety, housing demand, building management as well as owners' knowledge of and attention over building and fire safety. From the perspective of building safety, the Buildings Department (BD) will step up inspection and control of "sub-divided units", and enhance the safety level of works concerned through the inclusion of more works associated with "sub-divided units" in the MWCS. It will also enhance its efforts of educating owners and tenants in

understanding the potential hidden risks to building safety arising from "sub-divided units".

From the perspective of fire safety, the Fire Services Department (FSD) has also strengthened its inspection of and enforcement against old buildings. Fire safety facilities and related construction of composite commercial/residential and domestic buildings built in or before 1987 are governed by the Fire Safety (Buildings) Ordinance. The FSD and BD have been gradually inspecting target buildings in Hong Kong under a programmed approach. During inspections, the Departments will take follow-up actions if potential fire hazards caused by obstructions to fire escapes or structural problems are identified, or if there are problems associated with fire service installations and equipment.

To lower fire risks in old buildings in a more effective and comprehensive manner, the FSD introduced a multi-pronged approach in late 2008 for selected old buildings with higher potential of fire risks in densely populated areas, such as To Kwa Wan, Yau Tsim Mong and Wan Chai, and so on, with a view to lowering fire risks through inspection, enforcement and publicity. The approach includes arranging for the Special Enforcement Unit to inspect old buildings and take comprehensive enforcement actions, and follow-up regular inspections conducted by fire stations in the districts concerned. The FSD also invites district personalities to promote fire safety in these old buildings. There are also 1 100 Building Fire Safety Envoys who conduct inspections of their buildings concerned from time to time to ensure that there would be no reappearance of irregularities.

The focus of Prof Patrick LAU's question today is to seek a better understanding of how the Administration will help building owners enhance fire safety of "sub-divided units", in particular fire service installations and equipment. In this connection, the Secretary for Security, who attends the meeting together with me, may answer Members' further questions on this aspect later.

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

- (a) As pointed out by Prof Patrick LAU, currently there is no legislation regulating fire service equipment within private domestic units. As a result, there are no such requirements for "sub-divided units",

which are also private domestic units. The Security Bureau has indicated that given the lower fire load and fire risks of domestic buildings and domestic units, the code of practice issued by the FSD only requires the provision of essential fire service installations and equipment (such as fire hydrant and hose reel systems) and adequate unobstructed escape routes in common areas of these buildings. If we legislate to mandate the provision of large-scale fire service installations (such as automatic sprinkler systems and fire-resistant structures) inside domestic units, there will be immense difficulties for old domestic buildings in terms of engineering design. The public will also be concerned about the construction fees and the maintenance of such installations. Such issue should therefore be considered and handled carefully.

- (b) As regards building structural works involved in "sub-divided units", as I have explained to Members earlier on, we intend to tackle the problem by imposing control at source. We will therefore incorporate works commonly found in "sub-divided units" into the MWCS, requiring owners to carry out works through legal means by engaging registered contractors so as to enhance the safety level of such works. Internal drainage works, commonly found in "sub-divided units", are already regulated by the MWCS. We have proposed to further include other works commonly found in "sub-divided units" in the regulation of the MWCS. Apart from the addition of floor screeding and erection of partition walls, which have been frequently mentioned before, "formation of openings to a fire escape staircase or its protected lobby" is also one of the items proposed to be incorporated into the MWCS. The regulation of such types of works will help prevent the sub-division works from affecting fire escapes. The BD is now consulting the industry on the relevant technical details and will endeavour to submit the amendment regulation to the Legislative Council for scrutiny in the first quarter of 2012.

Currently, owners who plan to install fire service installations or equipment must follow the Fire Service (Installations and Equipment) Regulations, which stipulate that only registered fire service installations contractors are allowed to install fire service

installations or equipment. Registered contractors must comply with the requirements set out by the FSD when carrying out such works. The Regulations also require owners of fire service installations or equipment to hire registered contractors to carry out detailed inspections on a yearly basis and to keep such installations or equipment in efficient working order at all times.

- (c) We appreciate the need of providing appropriate assistance to owners in the enhancement of fire and building safety. In this connection, the Government, the Hong Kong Housing Society (HKHS) and the URA have been providing a number of financial assistance schemes to owners in need. As pointed out in the question, under the Comprehensive Building Safety Improvement Loan Scheme, Building Maintenance Grant Scheme for Elderly Owners and Integrated Building Maintenance Assistance Scheme, works relating to fire service facilities (including those carried out in common areas and interiors of buildings) are within the scope for which subsidies or loans can be granted. Such items include smoke detectors, automatic sprinkler systems and fire alarm systems as mentioned in the question.

Apart from financial assistance, the HKHS and URA will also provide owners with technical support in different aspects, such as providing advice and reminders to owners or owners' corporations on works relating to fire safety.

Apart from the above, under the new Urban Renewal Strategy published in February this year, the URA will promote rehabilitation of buildings in need of repair as one of its core businesses, including the setting up of Urban Renewal Resources Centres (URRCs) in urban areas. We will explore with the URA different methods to enhance building safety awareness in URRCs with, say, the use of 3D models as mentioned in the question to introduce relevant information. To ensure that the URRCs will meet the future needs of owners (including the promotion of correct building and fire safety knowledge to the public), the URA will continue to actively consider ideas put forward by all parties.



Regarding public education on fire safety, the work which the FSD has been actively pursuing out includes:

- (i) making good use of district networks to enhance awareness of fire safety. At present, all 18 districts have established District Fire Safety Committees to promote and disseminate fire safety awareness;
- (ii) promoting the importance of fire safety by distributing leaflets, pamphlets and posters to the public, owners of target buildings and people of different races;
- (iii) arranging for the re-broadcast of an announcement of public interests on ways of evacuation through television and radio shortly in order to enhance the ability to escape of members of the public in case of fire; and
- (iv) utilizing the double-decker Fire Safety Education Bus which has been put into operation early this year to carry out publicity work, particularly in old built-up areas, by introducing a simulated fire scene for the members of the public to learn how to make appropriate judgments on whether they should escape and how to escape.

**PROF PATRICK LAU** (in Cantonese): *Deputy President, I thank the Secretary for providing a detailed reply.*

*As the Secretary pointed out in the reply to the main question, the problem of "sub-divided units" is a matter of great concern to all of us. "Sub-divided units" are different from ordinary domestic units in that they are let to a number of households. The Secretary pointed out in part (a) of the reply to the main question that this issue had to be considered and handled carefully.*

*I believe that the installation of smoke detector systems alone can warn tenants of "sub-divided units" of fire outbreaks. Since the Secretary pointed out in part (b) of the reply to the main question that the Administration is now considering submitting the amendment regulation to the Legislative Council in*

*the first quarter of next year, so as to include the works commonly found in "sub-divided units" in the regulation of the MWCS, will the Secretary consider enacting legislation to regulate the installation of smoke detector systems? The installation of a smoke detector system only costs several hundred dollars, so the cost is not high.*

**DEPUTY PRESIDENT** (in Cantonese): Is the Secretary for Security going to reply?

**SECRETARY FOR SECURITY** (in Cantonese): Deputy President, on the provision of fire escapes and fire service equipment on premises in general, there are some requirements under the Buildings Ordinance (BO). However, at present, there is no legislation regulating fire service equipment in domestic units. As the main reply points out, generally speaking, since the inflammable items in domestic units are not large in number and the risk of fire outbreak is not very high, for the time being, we do not consider it necessary to enact legislation to mandate the installation of automatic sprinkler systems in domestic units. If each and every room in the existing hundreds of thousands of domestic units in Hong Kong is required to be fitted with automatic sprinkler systems, this will cause great inconvenience and a lot of hassle to the public. In this regard, I believe it is necessary for society to reach a consensus and the Government also needs to consider this matter carefully.

**DEPUTY PRESIDENT** (in Cantonese): Prof LAU, which part of your supplementary question has not been answered?

**PROF PATRICK LAU** (in Cantonese): *Deputy President, I am not asking the Secretary about the installation of automatic sprinkler systems, but the installation of smoke detector systems. Smoke detectors are a lot cheaper, and "sub-divided units" are no longer ordinary domestic units. After a unit has been sub-divided, it is no longer an ordinary domestic unit.*

**DEPUTY PRESIDENT** (in Cantonese): Prof LAU, please sit down. Secretary, the Member is asking if regulation can be imposed in relation to smoke detectors, which cost several hundred dollars.

**SECRETARY FOR SECURITY** (in Cantonese): In order to enhance the safety of the interior of buildings, we have conducted fire risk assessments on various types of buildings in accordance with the Fire Safety (Buildings) Ordinance. Since the commercial portion of composite commercial/residential buildings may be involved in activities that pose higher fire risks, for example, the storage of items used by restaurants, and the flow of people is greater and fire risks are higher, the FSD requires owners of the commercial portion of composite commercial/residential buildings to raise the fire safety standard of the interior of their units.

Concerning the residential portion of composite commercial/residential buildings and residential buildings in general, since the flow of people is less and the fire risk is lower, we only require owners to raise the fire safety standard of common areas, for example, public places. If legislation is enacted to require that fire service installations must also be fitted inside domestic units, the public may be concerned about such issues as the structural constraints and cost of such works. Therefore, we can submit the relevant proposal to the Legislative Council only after public consultation, extensive discussions in the community and the reaching of a consensus. Careful deliberations are needed in this regard.

**MR LEE WING-TAT** (in Cantonese): *Deputy President, last time, when I asked questions about the issue of "sub-divided units", I mentioned a situation, that is, if we rely solely on the BO, sometimes, there are many constraints. Last time, I cited the Fire Services Ordinance (Cap. 95), which grants reasonable powers to authorized persons of the FSD to enable them to inspect "sub-divided units". In fact, firemen do not have to break down the main doors of domestic units to enter these units for inspection. The number of old buildings in the constituencies to which many Honourable colleagues belong are far larger than that in my constituency. Many flats in old buildings even had their main doors removed or even their rear staircases demolished or sealed off on being sub-divided, so it can be noted at a glance that they are "sub-divided units".*

*May I ask the Secretary if he has examined in detail, together with the Director of Fire Services, whether or not according to Cap. 95 firemen can check in their routine inspections if there are instances of serious violation of the Fire Services Ordinance, including whether or not the main doors and fire escapes have been removed or demolished and whether or not rear staircases have been demolished or sealed off without having to apply for warrants and, if such instances are found, whether or not Fire Hazard Abatement Notices can be issued, so that officers of the BD do not have to apply for warrants to enter the premises?*

**SECRETARY FOR SECURITY** (in Cantonese): Deputy President, there is indeed such a provision as described by Mr LEE Wing-tat. According to section 8 of the Fire Services Ordinance (Cap. 95), the Director of Fire Services or any person authorized by him in writing shall have the right to enter any premises provided that 24 hours' notice in writing of the intended entry is given to the occupier. However, we must not forget the fact that a lot of people live in the residential buildings concerned, so in order to avoid causing disturbances to the public, unless we have sufficient grounds to prove that there are indeed fire hazards on the premises, for example, that hundreds of LPG canisters are stored on the premises, thus posing an immediate fire hazard, the FSD would not exercise the power to enter the premises lightly. Even the police have to handle entry into private premises or residential units cautiously. The home is everyone's fortress, so we cannot enter it lightly on the ground of suspecting that there are "sub-divided units".

I do not know if Secretary Carrie LAM will add anything concerning the provisions of the existing BO later. Concerning the requirements on the width of corridors in premises, the FSD is not responsible for enforcement in this regard, rather, this is the responsibility of the BD. We are not shifting the responsibility. However, if we want to enter premises, there must be sufficient grounds and the Director of Fire Services must be satisfied that the premises pose an immediate fire hazard before exercising the power to enter premises.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, it so happens that I also want to respond to the supplementary question raised by Mr

LEE. In fact, I have said earlier on that the violations relating to "sub-divided units" all involve building safety in three aspects: The first is overloading; the second is water seepage and the third is fire escape safety. On fire escape safety, when carrying out inspections, it is possible to ascertain if instances of violation exist without entering the premises. As regards enforcement, Secretary Ambrose LEE has pointed out the difficulties in entering premises just now and, in the legislature, I have also mentioned repeatedly the difficulties in applying for warrants. Nevertheless, we have taken enforcement actions in the past.

In the last three years, the BD has issued a total of 73 removal orders in response to complaints against "sub-divided units". Many cases involved the obstruction of rear staircases originally intended as fire escapes. Of these 73 cases, 51 involved violation of fire safety requirements. I will also answer in passing to the question raised by Mr LEE Wing-tat's fellow party member, Mr James TO, in the meeting of 22 June. I said in reply to the relevant urgent question that of these 51 cases in which removal orders were issued, in 28 of them, the removal orders had not been complied with. Mr TO hoped that we could follow up these 28 cases immediately and at least, check if they posed any fire hazard. Here, I am pleased to report to Members that officers of the BD have inspected the "sub-divided units" in these 28 cases and confirmed that the removal orders had been complied with in nine of them, whereas demolition was being carried out in two and further follow-up action was needed in seven cases. For example, the conditions of the relevant unauthorized building works had changed and as a result, we need to issue removal orders anew. As regards the remaining 10 cases, since the owners concerned did not comply with the removal orders, the BD will institute prosecution against them immediately.

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

**MR LEE WING-TAT** (in Cantonese): *The Secretary has misunderstood my question. What I am talking about is situations in which no warrant has been obtained, that is, if fire hazards are found during the inspection of old buildings by firemen, can notices be issued right away? The Secretary kept telling me about the difficulties in entering premises in his reply. What I am asking is:*

*Without entering premises and through observations on the outside alone, is it possible to issue notices?*

**SECRETARY FOR SECURITY** (in Cantonese): If it can be seen from the outside that there are many items suspected to be LPG cylinders in a domestic unit, of course, it will be suspected that the premises concerned pose an immediate hazard. In these circumstances, a notice can be issued. However, if the width of the corridors in residential units is reduced, we may not be able to see this from the outside.

**MS STARRY LEE** (in Cantonese): *Deputy President, in the past, owners of "sub-divided units" practically did not have to make any application, the Government would not process such applications and there was also no regulation. In reply to the Honourable colleague, the Administration said that it would endeavour to submit the amendment regulation to the Legislative Council for scrutiny in the first quarter of 2012 to bring other works commonly found in "sub-divided units" under the regulation of the MWCS. I welcome this move.*

*According to the simple survey conducted by us, in West Kowloon alone, there are already over 40 000 "sub-divided units" and the "sub-divided units" throughout Hong Kong are even so many as to be innumerable. All these "sub-divided units" had existed before the legislation came into effect and no applications were made to the authorities in relation to them, nor did any party give them any approval. They are also not subject to any regulation. Will the Secretary consider requiring the owners concerned to submit certificates issued by qualified contractors after the event to certify that their "sub-divided units" have not violated any regulation, that is, they do not cause any overloading, water seepage or pose any fire hazard to the buildings concerned? Will the Secretary consider doing so?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Under the present MWCS, we will give owners who had several types of minor works carried out on their homes a chance to obtain certification from qualified persons and exempt them from the demolition of the relevant structures. However, concerning the works involved in the sub-division of units, for the time being, we have no

intention to request the owners to furnish any certificate after the event. Rather, we will step up enforcement and our regulatory efforts. As I have said a number of times before, at present, some of the "sub-divided units" have not violated any regulation, so there is no question of unauthorized building works. All along, we have been carrying out inspections and issuing removal orders to errant owners. In the future, or from today onwards, we will step up our efforts. The performance target of the BD in 2011-2012 is to inspect at least 150 buildings in which we believe "sub-divided units" are common and we will be able to handle about 1 300 cases of "sub-divided units". We will follow the present enforcement policy and regulate existing "sub-divided units" in Hong Kong from this angle.

**DEPUTY PRESIDENT** (in Cantonese): We have spent more than 24 minutes on this question. Fifth question.

### **Performance of the Government**

5. **MR LEE WING-TAT** (in Cantonese): *Deputy President, an opinion poll conducted by the University of Hong Kong in June this year has revealed that the governance crisis of the Hong Kong Government continues to deepen and recent incidents concerning unauthorized building works, Jeremy GODFREY, the foul start of the Chief Executive election campaigns and disputes over the "real estate hegemony", and so on, have eroded the Government's credibility. The aforesaid opinion poll has also shown that the Chief Executive's support rating stands at 46.5 marks, which is not only a record low since his assumption of office as Chief Executive but is even lower than the ratings scored by his predecessor, putting him under the category of "depressing" performance, and among all politically appointed officials, no official falls under the category of "ideal" performer any more. In this connection, will the Government inform this Council:*

- (a) *whether it has reviewed why the popularity rating of the incumbent Chief Executive is even lower than that of his predecessor; if it has, of the reasons for the low popularity rating, and whether it will adopt any measure to alleviate public grievances; if it has not, the reasons for that; and*

- (b) *whether it has reviewed what blunders in policy implementation the Government made in the past six years; if it has, of the blunders it made, and whether it will apologize for the blunders to all members of the public of Hong Kong; if it has not conducted any review, the reasons for that?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, the Administration's reply to the question raised by Mr LEE Wing-tat is as follows:

A meaningful evaluation of government performance should be based on facts and reason. Only then could the merits and demerits be analysed and evaluated objectively and rationally, and the reasons properly identified. Past experience helps us implement improved policies and initiatives to address the inadequacies and raise the standard of governance.

The opinion polls on government policies and governance conducted by various organizations serve as useful reference to help us understand the views of the public. However, opinion polls are not without limitations given the complexity of our society. Thus, apart from drawing reference to opinion polls, we also need to solicit public views and opinions through various consultation channels within the institutional set-up, including the Legislative Council, District Councils and various advisory bodies and consultation processes, as well as through various forms of media, such as media reports and commentaries, phone-in programmes and on-line discussion forums, and even by going deep into the community to get in touch with the citizens and listen to their views direct.

The priority of the current-term Government can be summed up as promotion of economic development, improvement of people's livelihood, and further pursuit of democracy. Over the past four years, the government team under the leadership of the Chief Executive has always borne in mind the principle of people-based governance. We have been working in concerted efforts with full dedication.

Sharing the same boat, we have pulled together the effort of our 7 million fellow citizens to withstand the huge impacts of the international financial crisis. We have protected enterprises, saved jobs and successfully maintained the



stability of our financial system, economy and society, amid the financial turmoil. We have also turned crises into opportunities and enhanced the competitiveness of Hong Kong.

We have been making efforts to foster economic diversification. Active steps have been taken to develop Renminbi offshore business, further enriching the business diversity of Hong Kong as an international financial centre and enhancing our competitiveness. We have been striving to build a consensus in the community for promoting the development of the six industries.

To tie in with the trend of rapid development of the Mainland, we have actively participated in the National 12th Five-Year Plan and greatly deepened our co-operation with Guangdong, so as to set clearer positioning and targets for Hong Kong's long-term development, and open up more sustainable development prospects for Hong Kong.

We have also expedited the commencement of a number of long pending major infrastructure projects. In doing so, we have created tens of thousands of job opportunities for the construction trades concerned. Take 2011-2012 as an example, the estimated capital works expenditure will reach a record high of over \$58 billion and around 63 000 job opportunities will be created. These projects lay the foundation for enhancing the quality of life for the people and the competitiveness of Hong Kong.

On livelihood issues, we have also devoted immense efforts to help ease the burden of the people, which include introducing fiscal relief measures time and again as permitted by the financial position of the Government. We have successfully implemented the statutory minimum wage, safeguarding a more reasonable level of income for hundreds of thousands of grassroots citizens. Through extensive and in-depth consultations and discussions, we have also fostered a relatively broad-based consensus in the community on the direction of the healthcare reform in Hong Kong in the long run, facilitating its implementation in a step-by-step manner by the current Administration in the remainder of its term and by the next Administration.

On taking forward the process of democratization, the Electoral Reform Package for two elections in 2012 was passed in the spirit of mutual

understanding and accommodation to pave the way for the two elections by universal suffrage to be implemented in 2017 and 2020.

Some of the initiatives will take immediate effect and see immediate results, while the others will bring more concrete results in future Administrations. However, being a responsible Government accountable to our citizens and our next generations, we will strive to do our best. More importantly, the success of these initiatives lies in the concerted efforts of the Government and the Legislative Council in performing their respective functions, as well as the compromise and consensus reached by our rational and inclusive community at large.

Of course, as I have just mentioned, public opinions are as diverse as our society is complex. It is especially so in Hong Kong, a pluralistic and liberal community where rising awareness of personal rights amid competing aspirations and heightening expectations towards the Government is posing more and more challenges to policymaking.

Over the past few years, some of the policies introduced were relatively controversial with divergent views in the community. Certain policies were supported by mainstream views but met with strong resistance from some quarters. There were also some policies which, though introduced with good intentions, needed to be amended in light of public opinions, partly because the possible implications had not been thoroughly thought through. These will inevitably affect public confidence in the Government.

Meanwhile, the recent phenomenon of global asset-price bubbles, coupled with the trend of Hong Kong transforming into a knowledge-based economy, has accentuated social tension and some long-standing problems of Hong Kong. This has been sharply reflected in the housing and wealth-gap issues, which have in turn created many social problems and caused discontents among the public. We are fully aware of them and have always borne them in mind to spur us on. We have also been thinking profoundly of these issues in our daily work with a view to doing a better job.

There are inherent structural factors in these issues which are also subject to external influence and involve prioritization in the allocation of social resources. In solving these issues, we need to take into account whether the

policies are reasonable, practicable and sustainable and strive to foster a relatively unanimous consensus in the community. For this reason, there is a certain degree of difficulty for us to achieve quick and visible results through short-term measures. The key is to look into the problem and make an effort to find a balanced solution, so that the public can see the way forward. With public support, we can get closer to the goal in a steady and progressive manner.

Take the issue of subsidized home ownership which is a common concern among the public as an example. We are now studying the issue and will give an account in the Policy Address to be delivered in October this year.

Take the wealth gap issue as another example. We are seeking to narrow the gap gradually through our multi-pronged efforts, including implementing statutory minimum wage, expanding the transport subsidy scheme, promoting diversification of our economy to create more jobs at all strata, providing education and training, and keeping on improving the social security system.

Deputy President, we care for the people and take public opinion seriously. Many of the problems we are facing today are difficult and complicated ones, for which there are no completely satisfactory solutions that can satisfy everybody's aspirations and interests. However, I believe that we should always attach the greatest importance to the overall long-term interests of Hong Kong. Only on this basis can we explain our rationale clearly and make it readily acceptable to the public. Besides, we need to make continuous efforts to improve our communication with the community and let the public understand the rationale of the Government's policies, the various considerations in our policy direction, how to balance the interests of various sectors of the community, and so on. We also need to listen to more views and allow the public to have greater participation in the process.

Lastly, I have an observation that I would like to share with Members of the Legislative Council. While we are in different positions and have our own roles and duties to perform, from the angle of the public, we do have a common duty to work for the people and to strive for the well-being of society.

Deputy President, this is the last meeting of this Session and the last meeting held in this Chamber. Being a person who used to sit on Members' side and am now sitting on the side of officials, I have a lot of feelings. But I most

wish that after we moved into the Tamar Site, we can turn a new page and take on a new look, and throw things at people less and do more.

**MR LEE WING-TAT** (in Cantonese): *Deputy President, Hong Kong people in general are actually very kind-hearted and they do not make many demands on the Government. All that they ask for is to lead a simple life and live well, and have a shelter for dwelling. This is what I would like to focus on.*

*I would like to ask the Government or the Chief Secretary for Administration who is in the Chamber this question. Over the years, the housing problem has remained for a long time and there has been an increasingly clear consensus in society and even among property developers, calling for the resumption of the Home Ownership Scheme (HOS). Members of the public obviously hope that the Government will expeditiously and firmly make a decision to respond to the aspiration of the public. Of course, it does not mean that HOS flats can be provided the next day after a decision is made. This we all know. So, the Chief Secretary for Administration needs not tell us that HOS flats will not be provided right after a decision is made.*

*That said, people will think that on such an important issue, why is it still necessary to study for another six months for a decision to be made only in October? So, I have this question for the Chief Secretary. I have learnt from reports that almost the entire team of accountable officials support the resumption of the HOS, including you, Chief Secretary, and the Financial Secretary, with only one person opposing it, namely, Donald TSANG. Is this the reason why your team has been working so sluggishly, resulting in the widening of the discrepancy or gap between public aspirations and the Government's decision?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, Mr LEE Wing-tat is right in saying that the public are very kind-hearted, and they are also very practical. Under the current circumstances in the property market, about one third of the households live in public housing. In the past, public housing tenants might purchase HOS flats with the Green Form in the next stage, and then when there might be further improvement in their

living, they could convert their HOS flats into private flats or buy residential flats in the private sector.

As the prices of private residential flats are moving up higher and higher and the price differentials have become bigger and bigger, many people find it increasingly difficult to buy their own properties and they find it impossible to realize this aspiration. We do appreciate these sentiments of the people and we also understand this problem. I believe employment aside, housing is a very important and perhaps even the first and foremost consideration to most families.

Therefore, as I have just said in the main reply, we are studying the issue in depth and the Chief Executive will give a full account in his Policy Address.

**MR LEE WING-TAT** (in Cantonese): *Deputy President, my follow-up is short. The public hope that they can make a decision as soon as possible, but they still have to put it off for a few more months. The Government has always been very efficient in its work, but why does it have to create such a long gap between this aspiration and its decision? This is my follow-up question.*

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

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, the SAR Government does sense the urgency of the people. We all understand that the public have certain expectations for the resumption of HOS or the introduction of a new approach (be it an improved version or not) and they strongly wish to see it coming into operation as soon as possible. We have these expectations too, and we will do it expeditiously. But we hope that each and every policy can be implemented soundly and properly. So, as the Chief Executive has said, he will give a full account in the Policy Address. It is already July now and the Policy Address will be delivered in October. While members of the public may have already waited for a long time, I call on them to be more accommodating and patient and wait for just another three months.

**MR LAU WONG-FAT** (in Cantonese): *Deputy President, according to the most recent opinion poll conducted by the University of Hong Kong, the support rating of the Chief Executive stands at an average of 46.5 marks and is continuously showing a downward trend. Many members of the public are concerned that the SAR Government has turned into a sunset government which will not introduce any major initiatives in the coming year. Deputy President, my supplementary question is this: Has the Government also conducted opinion polls to find out the Chief Executive's public support rating, in order to adopt measures to address problems at root and hence restore the public's confidence in the Government?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, the SAR Government certainly makes reference to the opinion polls. As I said in the main reply, apart from drawing reference to the opinion polls, we also listen to public views through many various channels, so as to solicit views on how we can do better in policy implementation. Insofar as opinion polls are concerned, our mindset is that if the ratings have improved, we would see it as an encouragement from the public for our work, and if the ratings show a decline, we would see it as a reminder to spur us on.

With regard to the plans of the third SAR Government in the remaining year (less than a year or almost a year), I believe it is the wish of the people that the Government will make achievements and do its job properly in the remaining term. So, as the Chief Executive has also said, we will perform our duties faithfully and do our utmost in each and every task.

The Policy Address will give an account of the plans for the remaining year, which will cover issues of concern to the public, such as the issue of home ownership as raised by the Member in his question. In this connection, we welcome the Legislative Council to provide more input on the more pressing issues that need to be dealt with in the coming year for our reference and consideration.

**MR ANDREW LEUNG** (in Cantonese): *Deputy President, the main question mentioned that the ratings scored by the Hong Kong Government and even the Chief Executive had dropped. The poll results published by the same organization yesterday show a declining rating for Members of the Legislative*

*Council, as our support rating is only 10%. This is like the pot calling the kettle black.*

*May I ask the Chief Secretary, since he has worked on both sides, what he will do in the remaining year to improve the relationship between the legislature and the executive, in order to help the SAR Government resolve the difficult and complicated problems as mentioned by him earlier, so that he can implement policies expeditiously and efficiently?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, the relationship between the legislature and the executive is a very important subject. The attitude of the SAR Government is that we see the Legislative Council as our partner.

We certainly understand that our roles are different and so, it is impossible to completely avoid divergence of opinion on some issues. That said, what do I deeply believe the public would wish to see? Apart from seeing the Legislative Council perform the roles of enacting legislation, making appropriations and monitoring the Government, they would also wish to see the Legislative Council and the Government (that is, the executive) co-operating well with each other to strive for the well-being of the people and to serve the people.

Therefore, I think the public hope to see Members continuously performing the role of monitoring the Government but in the final analysis, they still hope that the Legislative Council can effectively co-operate with the Government to serve the people and to strive for their well-being. The SAR Government is prepared to make continuous efforts to foster communication with the Legislative Council and co-operate with the Legislative Council, with a view to continuously answering the public's expectations for us and Members.

**DR LAM TAI-FAI** (in Cantonese): *Deputy President, the Director of Hong Kong and Macao Affairs Office of the State Council, WANG Guangya, has recently met with the Federation of Trade Unions in Beijing. He openly stated to the reporters that the next Chief Executive must meet three criteria: First, he must love Hong Kong and love the country; second, he must have a strong ability in governance; third, he must command a high degree of acceptance in society. As far as I understand it, these remarks of Director WANG are believed to be*

*representing the wish of the Central Authorities. But these criteria must actually be met not only by the next Chief Executive, but also the incumbent Chief Executive.*

*Just now "Uncle Fat" mentioned that a recent opinion poll showed a low popularity rating of the Chief Executive and put simply, it means that his public acceptance is not high. Certainly, the public will not challenge the Chief Executive for not loving Hong Kong and the country, but when his popularity is far too low or his public acceptance is low, the public will query his ability in governance. Although the Chief Executive has said that popularity was like floating clouds to him, but in view of the current circumstances, I think it will be a big headache for the Government if it wants to improve its popularity.*

*Deputy President, my supplementary question is this: I think the most effective way to raise its popularity is to directly and personally get in touch with the people, disregarding their social strata and whether they are rich people, the business community, the disadvantaged, small and medium enterprises, the elderly or the youth, because they all are part of society. The Government should understand their aspirations and problems, and it cannot just rely on creating some Facebook groups, showing up at cocktail parties and even attending radio programmes. The Government must come down off its high horse and go into the community to get in touch with the people before it can truly keep tabs on public sentiments and the pulse of society. To this end, the Government can, among other things, pay home visits, district visits, and so on.*

*Deputy President, my supplementary question is this: Has the SAR Government reviewed the adequacy of its district visits over the past few years? Does it have plans to put in place a system or provide a timetable in the coming year to require all accountable officials (who, of course, include the Chief Executive himself and even the Secretaries of Department) to conduct more district visits to personally understand public sentiments and narrow the gap with the public, not fearing their abuses or catcalls but sincerely getting in touch with the people, in order to truly care for the people?*

*I wonder if the Chief Secretary will think that my question is too long. Do I need to repeat it? (Laughter) I can repeat it.*



**DEPUTY PRESIDENT** (in Cantonese): Chief Secretary, you just have to pay attention to the last part of his supplementary question.

**DR LAM TAI-FAI** (in Cantonese): *Have you done enough in respect of district visits, and in the coming year, in what areas will you carry out more work .....*

**DEPUTY PRESIDENT** (in Cantonese): Dr LAM, your supplementary question is already very clear. If you go on speaking, the Chief Secretary will not have the time to give a reply.

**DR LAM TAI-FAI** (in Cantonese): *As this is the last meeting of this Session, I have, therefore, said a bit more.*

**DEPUTY PRESIDENT** (in Cantonese): I understand, but if you go on speaking, the Chief Secretary will not have the time to reply.

**DR LAM TAI-FAI** (in Cantonese): *I beg your pardon. I do not mean to cause delay on purpose. I am sorry, Deputy President.*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, as I said in reply to the supplementary question raised by Mr LAU Wong-fat earlier on, I think the public have certain expectations for the SAR Government and for the Legislative Council.

We care for the people. With regard to our work in visiting districts or visiting the public and gaining an understanding of public sentiments, we do not carry out all such work in the limelight. More often than not, when we are genuinely sincere in visiting a district or certain members of the public, we are indeed genuinely sincere in finding out about their situation or listening to the views of the people direct.

During the past fortnight, I actually visited some tenants of sub-divided units in two districts. On one of the occasions, an organization in the district arranged for me to meet and talk with dozens of residents, and I listened to these grass-roots people who live in poverty and face certain challenges. They have many grievances and voices. For example, some are on the Waiting List for public housing but have not been allocated a unit even after waiting for years; some are now living in Sham Shui Po but are allocated with public housing units in Tuen Mun and they find it most inconvenient to live there; nor do the elderly people wish to move there, and so on. We learnt of their many livelihood problems like these. Of course, I still cannot resolve all these problems for them.

However, to all members of the public, I think it is most important to see that the Government is serving them and serving for the well-being of the people. This is why we often ask ourselves how the policies implemented by us can benefit the public. In understanding public sentiments and taking forward a policy, the majority interests are the main basis of our work. I think we have done our utmost in such work, and each and every colleague in the Government has also made their utmost efforts.

Therefore, we will continue to work hard in these respects, and the Government will continue to implement policies on the basis of communication and in the spirit of people-based governance.

**DEPUTY PRESIDENT** (in Cantonese): We have spent over 25 minutes on this question. Five Members are still waiting for their turn to ask questions. This shows that Members would like the Government to continue to work hard and do more. Last oral question.

### **Measures to Reduce Carcinogenic Effect of Mobile Phones**

6. **MR CHAN KIN-POR** (in Cantonese): *Deputy President, the World Health Organization (WHO) of the United Nations has recently classified mobile phones as possibly carcinogenic to humans, and placed them in the same category as pesticides, human immunodeficiency virus and plasticiser which has attracted wide media coverage recently. The WHO has advised that prolonged*

*use of mobile phones is associated with the risk for acoustic neuroma, and that using mobile phones for more than 30 minutes daily will result in an increase in the risk for gliomas by 40%. Medical specialists have pointed out that a malignant glioma cannot be completely cured, and only half of the patients with such a tumour have a survival rate of one year. In this connection, will the Government inform this Council:*

- (a) whether the authorities will follow up the WHO report by conducting a study on the effect of exposure to radiation from mobile phones on public health; if they will, of the details; if not, the reasons for that; given that it has been pointed out in the Lancet, an international medical journal, that the amount of radiation absorbed by the head tissues of children is two times higher than that of adults, and the Department of Health has also advised that children should avoid using mobile phones frequently, whether the authorities will specifically warn parents of young children about this and encourage members of the public to use hands-free devices as far as possible or even use communication means which can reduce exposure to radiation such as SMS messages;*
- (b) given that the Office of the Telecommunications Authority (OFTA) currently encourages mobile phone manufacturers, suppliers and dealers to affix labels on a voluntary basis to mobile phones stating that they are type-approved, yet these labels do not show the Specific Absorption Rate (SAR) of mobile phones, which is a measure of the amount of radiofrequency radiation absorbed by the organs of a person when he is using a mobile phone, and that among the mobile phones which are confirmed to have complied with the OFTA's standard on the safety limits of radiofrequency radiation at present, the difference in their SARs can be over 27 times, whether it knows if the OFTA will consider requiring mobile phone manufacturers, suppliers and dealers to affix labels to the packaging boxes of mobile-phone products to state the products' radiation data for public reference; and*
- (c) as the OFTA is applying two different standards on the safety limits of radiofrequency radiation for mobile phones, whether it knows if the OFTA has any plan to apply the most stringent standard only;*

*given that the information provided by the National Cancer Institute in the United States shows that mobile phones will have higher radiation emission level in poor reception areas, and the OFTA has also advised that members of the public should consider avoiding using mobile phones in poor reception areas, whether the authorities will check the strength of signals of mobile phone networks in individual areas, in particular remote areas, and further assist mobile network operators in improving the coverage of mobile networks in poor reception areas, so as to obviate the need for mobile phones to increase the radiant power over a prolonged period in order to search and maintain signals, which will affect public health?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Deputy President, on 31 May this year, the International Agency for Research on Cancer (IARC) under the WHO published its assessment on the carcinogenicity of radiofrequency electromagnetic fields, giving rise to concerns among some members of the public.

Unlike ionising radiation such as X-rays and nuclear radiation, radiofrequency electromagnetic fields generated by mobile phone technology are a type of non-ionising radiation. Simply put, non-ionising radiation has lower energy and is insufficient to change the chemical properties of substances. It cannot cause harm by breaking chemical bonds in the human body. Radiofrequency electromagnetic fields may generate a small amount of heat when absorbed into the human body. This would normally not give rise to any adverse health effects as the human body's normal thermoregulatory processes can carry this heat away.

(THE PRESIDENT resumed the Chair)

President, in 2000, the IARC launched an international study named Interphone to research into whether there was any association between mobile phone use and brain tumours. To date, this has been the largest study of its kind. In 2010, the Interphone study concluded in its report that:

- (i) There was no data indicating an increased risk of glioma and meningioma amongst people who had used mobile phones for over 10 years;
- (ii) There was no consistent trend that showed risk increasing with longer mobile phone call times; and
- (iii) Although statistically, the 10% of the sampled population with the highest cumulative call time (that is, accumulating over 1 640 hours of calls over the 10 years, or averaging over 30 minutes of calls per day) had a higher risk of glioma, there were limitations in the study method that could lead to bias and error in the data. The results are certainly not equivalent to an increased risk of glioma upon making mobile phone calls for over 30 minutes per day.

In sum, the Interphone study did not come up with any strong or valid conclusion, nor did it explain any causal relationships. In fact, there are numerous risk factors which may cause cancer. The IARC suggests that more extensive research is required in order to eliminate all other factors in ascertaining whether the use of mobile phones in itself is carcinogenic.

Nevertheless, on the basis of the above data, the IARC classified radiofrequency electromagnetic fields as a Group 2B cancer-causing agent on May 31 this year. By definition, Group 2B agents are "possibly carcinogenic to humans". Generally speaking, there is less than sufficient evidence in experimental animals and only limited evidence in humans showing that agents classified under Group 2B are carcinogenic. As a matter of fact, many agents found in our daily lives are also classified as Group 2B agents, such as coffee and certain dry cleaning agents. The proven health risk is far lower than that of asbestos, smoking, second-hand smoking, nicotine and ionising radiation, and so on.

While there is no evidence showing that mobile phone use would increase the risk of brain tumours, a large amount of research is under way around the world to investigate, understand and monitor the potential impact of mobile phone use, given that there has been a surge in the mobile phone users globally in recent years, as well as a lack of data on mobile phone use covering a period for more than 15 years.

In response to the three parts of the question, my reply, with consolidated input from the Department of Health (DH) and the Office of the Telecommunications Authority (OFTA), is as follows –

- (a) The OFTA has set up a dedicated page on its website on Radiofrequency Radiation Safety which provides relevant information for public reference. The OFTA has also produced information leaflets, booklets and posters on radiofrequency radiation to disseminate information about mobile phone safety among the public.

In addition, the Centre for Health Protection website maintains a webpage which refers to the latest assessment of the IARC. This would help the public understand the relevant health effects and risks.

As explained above, the health effects of mobile phone use requires further investigation. However, if members of the public remain concerned, they may choose to adopt certain practices in their daily lifestyles to reduce exposure to radiofrequency electromagnetic fields, such as limiting the length of mobile phone calls, using hands-free devices that keep the mobile phone at a distance, as well as avoiding contact with the antenna when the phone is in use. Such information is available on the websites of the OFTA and the Centre for Health Protection.

Some members of the public may be particularly concerned that children and adolescents may be more vulnerable to the effects of radiofrequency electromagnetic fields, because this technology has been available to them from their early years. In this regard, parents may decide on their own as to whether their children should avoid using mobile phones for unnecessary calls.

The DH will continue to keep in view the findings of reports and research on this subject, in order to keep abreast of the latest developments and the risks to public health. The DH will also offer professional medical advice to the OFTA for consideration of regulatory issues.

- (b) All mobile phones sold in the Hong Kong market must comply with the HKTA2001 specification issued by the OFTA, namely "Compliance Test Specification - Safety and Electrical Protection Requirements for Subscriber Telecommunications Equipment". The specification is set according to internationally recognized standards and covers the electrical safety requirements for telecommunications equipment, as well as the safety standards on radiofrequency electromagnetic fields for mobile phones.

According to the above specification, the level of radiofrequency electromagnetic fields from mobile phones must comply with either the safety limits imposed by the International Commission on Non-Ionising Radiation Protection (ICNIRP) or those by the American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE). Selling mobile phones that do not comply with such specification is a breach of the Telecommunications Ordinance and liable to prosecution.

At present, the OFTA operates the Telecommunications Equipment Evaluation and Certification Scheme with a view to better providing for the evaluation and certification of telecommunications equipment. Under the scheme, manufacturers and suppliers apply for certification of mobile phones on a voluntary basis in order to prove that such products comply with the technical specifications concerned. The vast majority of mobile phone brands sold in Hong Kong have applied for and acquired certification for their products. The OFTA has also published the "specific absorption rate" (SAR) of all certified mobile phones on its website for the reference of the public.

As data in respect of the level of radiofrequency electromagnetic fields from mobile phone products are readily accessible to the public via the Internet, the OFTA has not, at this stage, considered requiring mobile phone manufacturers or suppliers to specify the relevant data on the packages of their products.

- (c) The two standards on the safety limits of radiofrequency electromagnetic fields from mobile phones mentioned in the

question refer to the aforementioned SAR limits promulgated by the ICNIRP and the ANSI/IEEE respectively. These limits are adopted by the OFTA as the safety standards on radiofrequency electromagnetic fields for mobile phones having consulted the DH.

Since the two standards make use of different assessment methodologies and procedures, they cannot be compared directly. Despite the difference, the safety protection offered by two standards is largely equivalent.

In areas with poorer service reception, such as remote areas or obscured spots in urban areas, mobile phones may generate a higher level of radiofrequency electromagnetic fields. However, even under such circumstances, the normal use of mobile phones will not result in exceeding the SAR limits prescribed in the safety standards on radiofrequency electromagnetic fields for mobile phones. If members of the public remain concerned, they may consider using hands-free kits, avoid using mobile phones in areas with poor reception and shortening their mobile phone calls.

**MR CHAN KIN-POR** (in Cantonese): *President, the two "specific absorption rate" standards currently adopted in Hong Kong were last updated in 1990s, which was more than a decade ago. It was as early as the 1980s when the research, on which one of these standards was developed, was conducted. Given that there have been so many reports and studies concerning the carcinogenicity of mobile phones in recent years, will the authorities examine whether the two radiation standards have become obsolete?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this question?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, the two standards, which are generally adopted in the world, were adopted by the OFTA when formulating the relative safety standards for mobile phones after consulting the DH. These standards, which are also the "specific absorption rate" limits promulgated by the ICNIRP and the ANSI/IEEE,



have been adopted by all other countries and regions in the world as yardsticks in compliance with the international standard.

**MR CHAN HAK-KAN** (in Cantonese): *President, I would like to seek a clarification from the Secretary. Just now he pointed out that we can check the radiation of mobile phones on website of the OFTA. But as we know, new mobile phones or tablet computers are currently launched at a quick pace. Does the information given on the website keep abreast of the latest models of mobile phones sold in the market? We will be unable to know the amount of radiation of a new mobile phone that we buy if we rely on the information published on the website. Are there any other channels through which relevant information can be referred to by the public?*

*We hope that the Government will consider requesting the specification of data concerning the radiation level of new mobile phones or tablet computers when they are sold in the market so that the public can make an informed choice.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, I thank Mr CHAN Hak-kan for his question. Information on the OFTA website will be updated constantly. At present, on the website — you may browse the webpage if you have time — the voluntary certification scheme has seen the participation of more than 100 manufacturers and 1 300 models of mobile phones. The relevant information can be found by searching the relevant manufacturer and model on the webpage. The webpage is updated so frequently that the most popular models in the market are also included. So, the public can easily make reference to the webpage to find which models, brand names, and even the "specific absorption rate" have also been uploaded. As a lot of information is available on the webpage, we have, for the time being, no intention to require that labels be affixed to the packages of the products on a mandatory basis.

**MS AUDREY EU** (in Cantonese): *President, I have noted that in the Government's reply, mention is made of a relevant international study which has*

*pointed out that the 10% of the sampled population with the highest cumulative call time have accumulated over 1 640 hours of calls over 10 years, or an average of over 30 minutes of calls per day.*

*President, I believe the call times of the general public of Hong Kong will mostly exceed 30 minutes per day. May I specifically ask whether the Hong Kong Government has studied the frequency of use and mobile phone call times of Hong Kong people? Compared with foreign countries — tests carried out in foreign countries may not really be applicable to Hong Kong — we have to examine the call times of Hong Kong people, especially those of children, which are usually very long. The call times for businessmen are also very long. While some people will sleep with their mobile phones placed near them, many will play video games on their mobile phones.*

*Has the SAR Government studied the mobile phone call times and frequency of use by Hong Kong people? Is it necessary for the Government to conduct such research in Hong Kong as overseas studies may not be applicable to Hong Kong?*

**PRESIDENT** (in Cantonese): Which Secretary will answer it?

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, we share the views of Ms EU in this regard. We have adopted a very serious attitude in dealing with any potential threat or risk to public health or individual safety. We will certainly deal with the matter in a serious manner.

Speaking of figures, let me provide some information for Members' reference. According to the cancer database in Hong Kong, which has been collecting data since 1989, 4.1 people in every 100 000 suffered from malignant neoplasm of brain in the central nervous system in 1989. As for the latest data — if my memory is correct, it should be 2007 — it should be 2.9 people in every 100 000. Hence, a downward trend can be noted in the figures actually.

Secondly, concerning local research, there are two renowned medical schools in Hong Kong. I believe colleagues in the medical schools have taken follow-up actions on various topics (including this one), as well as epidemiology

and statistics. We welcome their efforts. They may apply for funding from the Government or other research funds to carry out relevant studies if there is a need in this regard.

The last point I would like to make is that under the Interphone, a 10-year research covering more than 10 countries was conducted from 2000 to 2010. As to the question of whether we have the ability to conduct such research or whether such research can be conducted in Hong Kong, I believe the carcinogenic risk in question that we are now facing is relatively much lower than that of other cancer-causing agents for the time being, particularly insofar as medical research is concerned. I have spent a lot of time studying the research report, which contains almost 20 pages. In the report, dozens of so-called odds ratio studies have been conducted, of which only one is relatively obvious (1.14), meaning that those whose daily call time was over 30 minutes in the past 10 years have an additional risk of 14% suffering from a particular large tumour occurred close to the ear used for mobile phone listening. As for the other dozens of research on odds ratio, most of them did not indicate any increased risk. On the contrary, the risk is lower than that of ordinary people. So, as I said briefly in the main answer, the study did not come up with any convincing and strong evidence showing any direct linear relationships between the use of mobile phones and the risk of brain tumours.

Therefore, we will continue to pay close attention to international research, and we will not dismiss the possibility of local researchers participating in such studies. I believe it is well-known that no conclusion may be drawn even though research has been conducted in more than 10 countries for a decade. So, we have to consider clearly whether it is the most appropriate way of dealing with the issue for the SAR Government to conduct a study on its own.

**DR PAN PEY-CHYOU** (in Cantonese): *President, my concern is exactly the concern of Ms Audrey EU. First of all, I would like to point out that according to the study of the IARC named Interphone, as mentioned by Ms Audrey EU earlier, statistically the 10% of the sampled population with the highest call time had a higher risk of glioma. I would like to point out that the threshold must be set at a very high level if they want to get substantive results statistically. In my*

*opinion, the warning sounded by the IARC and its recommendation that further in-depth research be conducted should not be ignored.*

*May I ask the Government, even if it has not directly conducted any study, whether it has considered co-ordinating the two universities or other research institutions in conducting a research in this aspect? The research can be more meticulous by looking into the users' habits, whether they have used Bluetooth or other safe devices, the duration of call times and their age groups. I think we can go into further details.*

*May I ask the Government whether it will consider co-ordinating or assisting research institutions in conducting a research in this aspect? I think such a research is very meaningful.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, I thank Dr PAN for his supplementary question. As I have mentioned in response to Ms EU's question, I believe that in the two medical schools, there are many research staff who may be particularly interested in this aspect or other issues. Their efforts are welcome. We will also pay close attention to their research findings. But in Hong Kong which is such a small city, as I have just explained, according to the information of the cancer database, 2.9 people in every 100 000 have suffered from malignant neoplasm of brain in the central nervous system each year. If bias cannot be ruled out and strong evidence cannot be provided by the findings from the accumulative clinical cases and precedents of a 10-year international study covering 13 countries, each of which has a population larger than that of Hong Kong, I believe if Hong Kong has to accumulate thousands of cases, then even — let alone more cases — I believe we may not be able to accumulate the same number of cases as that study even in a few decades. So, as I said earlier, we will deal with it seriously and attach great importance to the international research findings. We welcome any opportunity of direct participation and even encourage the participation of our research personnel.

However, is it necessary for Hong Kong to be at the international level in order to disseminate preventive public health messages for people's reference? I have given an account on this earlier. Firstly, I agree to the concerns of Ms EU and Dr PAN, especially the vulnerability of children and young people to mobile phone radiation. According to other research findings, they may be more

susceptible to non-ionising radiation, which is generated by mobile phones, than adults. So, we would like to urge parents to reduce the call times of their children as far as possible according to different situations, especially when mobile phones are used without hands-free devices. Heavy use of mobile phones should be avoided unless necessary. Regarding other aspects, we know that radiation field has a distance factor. In other words, an inverse square will be formed if the distance between the mobile phone and the brain or the ear is greater, meaning that the greater the distance, the strength of radiation will decrease exponentially. Therefore, non-ionising radiation can be greatly reduced by using hands-free devices. Before the medical sector has come up with the most updated and most authoritative evidence, people may change their lifestyles or habits to help reduce the potential risks to which they themselves or their families are exposed if they are really worried about it.

**DR PAN PEY-CHYOU** (in Cantonese): *I hope that the Secretary can answer unequivocally whether he will encourage and co-ordinate the relevant research .....*

**PRESIDENT** (in Cantonese): Dr PAN, the Secretary has given an unequivocal answer. Perhaps you do not agree with his views, but please follow up the matter through other channels.

Oral questions end here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Selling of "Parallel-imported Products" as Products Imported by Local Dealers**

7. **MRS SOPHIE LEUNG** (in Chinese): *President, it has been learnt that some merchants sell parallel-imported products (commonly known as "parallel imports") as products imported through official dealers (commonly known as "authorized products"), and such practice is often found in the sale of electronic products. Some shops claimed that the products they sell are "authorized products", but when consumers find that the products are actually "parallel*

*imports", the shopkeepers will use an excuse that the products are "authorized products for Japan" or "authorized products for China" instead of "authorized products for Hong Kong" as an explanation; some merchants also repack "parallel imports" with the packing of "authorized products for Hong Kong", or put a label of "original authorized products for Hong Kong" onto the package of "parallel imports", or mark on the price tags that such products are "authorized products". Apart from the price differences, there are also differences in after-sales services and specifications, and so on, between "parallel imports" and "authorized products", but quite a number of consumers and tourists have been cheated as they are not able to distinguish between "parallel imports" and "authorized products". In this connection, will the Government inform this Council:*

- (a) whether in Hong Kong the interpretation of "authorized product" is stipulated in law; whether it has assessed if it is illegal for shops to indicate on the invoices, packages or price tags of "parallel imports" that the products are "authorized products", or to repack "parallel imports" with the packing of "authorized products" for sale; how the authorities prevent merchants from indiscriminately claiming their products as "authorized products" and stop shops from using the packing of "authorized products" as disguise; as it is difficult for consumers to tell from the product packing whether it is an "authorized product" or to call the dealer to make enquiries each time they make a purchase, what measures the authorities have in place to protect consumers from such frauds;*
- (b) whether it has assessed if it is illegal to sell "parallel imports" as "authorized products"; if the assessment result is in the affirmative, of the relevant penalties; whether apart from making refunds, the persons-in-charge of the shops have to bear other legal liabilities; whether the shops which are uncovered to have sold "parallel imports" as "authorized products" may continue to operate; in the past three years, of the respective numbers of complaints received and prosecutions instituted in respect of such sales practice, the number of inspections carried out to check whether there is such sales practice in the market, as well as the number of shops which have repeatedly been complained for selling "parallel imports" as*

*"authorized products" or of which the persons-in-charge have repeatedly been prosecuted for such sales practice;*

- (c) of the measures the authorities have put in place to protect tourists and consumers by which they can claim their losses easily and quickly after being cheated by shops selling "parallel imports" as "authorized products"; and by what means tourists who have left Hong Kong can make claims and take follow-up actions;*
- (d) given that some shops have made use of online platforms, discussion forums, and social networking sites, and so on, to claim that their products are "authorized products" and list the prices to attract consumers, whether the persons-in-charge of such online platforms have to bear the relevant legal liabilities; if so, of the details; and*
- (e) whether the Government will formulate a list of "unscrupulous shops" which sell "parallel imports" as "authorized products" for the reference of consumers and tourists and disclose the information of shops which have repeatedly been complained or of which the persons-in-charge have been convicted as a result of such sales practice?*

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

(a) and (b)

At present, our legislation does not define "authorized products" or "parallel imports". However, any person commits the offence of false trade descriptions under the Trade Descriptions Ordinance (TDO) (Cap. 362) if he falsely represents that the goods he supplies are imported through official dealers and provided with after-sale and maintenance services provided by them (that is, "authorized products") while in fact the goods are not (commonly known as "parallel imports"). Offenders are liable to a maximum fine of \$500,000 and imprisonment for five years.

The Customs and Excise Department (the Customs) adopts a risk-profiling approach and conducts targeted inspections on high-risk shops so as to clamp down on false trade descriptions (including the sale of "parallel imports" as "authorized products"). The total number of inspections conducted by the Customs between March 2009\* and June 2011 is as follows:

	<i>Number of Shops under Inspection</i>
2009 (March to December)	877
2010	709
2011 (January to June)	310

In the above period, the number of complaints involving suspected sale of "parallel imports" as "authorized products" received by the Customs, and the enforcement action taken, are as follows:

	<i>Number of Complaints</i>	<i>Outcome of Investigation</i>
2009 (March to December)*	6	<ul style="list-style-type: none"> <li>- No follow-up could be taken in three cases in which the complainants were unwilling to provide the goods concerned or supply further information.</li> <li>- In one case, the complainant settled with the trader and dropped the complaint.</li> <li>- In one case, after investigation, the goods were found to be imported through its official dealer.</li> <li>- In the remaining case, no follow-up could be taken as the shop involved had closed down and the whereabouts of the trader could not be traced.</li> </ul>

\* The TDO was amended in 2008 and the definition has been broadened to cover indications of after-sale services relating to goods (such as the person by whom services are provided, the place at which services are provided, the scope of services, the period for which services are available and service charges). The amendments took effect in March 2009. Hence, statistics on enforcement actions thereafter are supplied.



	<i>Number of Complaints</i>	<i>Outcome of Investigation</i>
2010	4	- In two cases, after investigation, the goods were found to be imported through their official dealers in both cases. - Investigation into the other two cases is underway.
2011 (January to June)	The Customs has not received any complaints in relation to suspected sale of "parallel imports" as "authorized products".	

The Customs will continue to conduct regular inspections against false trade descriptions. It has established channels for aggrieved consumers to report suspected cases. The Customs also attaches importance to the promotion, publicity and education on consumer protection legislation and makes use of various channels including brochures, seminars for the trade, and Announcements of Public Interests to remind the trade of the legal requirements and encourage compliance. The Consumer Council (the CC) also conducts various consumer education programmes to raise consumer awareness. In addition, consumers should always be circumspect and, if necessary, enquire with official dealers whether particular goods are authorized products.

- (c) On the protection of tourists and consumers, the Customs set up quick response teams in March 2009. On duty around the clock, and ready to arrive at case scenes quickly, they attend to consumer complaints (including those of short-haul visitors) immediately. Visitors who have departed from Hong Kong may also lodge complaints to the Customs by email from their homes. The Customs will follow up and conduct investigation.

The CC assists in resolving consumer disputes by mediating between consumers and traders, and provides advice on consumer matters. Consumers who wish to seek redress in cases involving less than \$50,000 may also lodge a claim in the Small Claims Tribunal. Financial and legal assistance under the Consumer Legal Action

Fund (of which the CC is the trustee) is also available to consumers in cases involving significant consumer interests.

- (d) As regards promotional claims by traders on online platforms, social networking sites and discussion forums that goods for sale are "authorized products", we reiterate that the TDO prohibits any person from applying false trade descriptions to goods in the course of trade irrespective of whether it is conducted online or offline.
- (e) At present, the CC has in place a name-and-shame mechanism under which the names and addresses of traders which have engaged frequently in unfair trade practices or have committed offences under the TDO are disclosed through press releases and on the CC's website for public information. The mechanism seeks to enable consumers (including visitors) to become more vigilant.

### **Complaints on Leak of Personal Data After Using Interactive Employment Service of Labour Department**

8. **MR IP KWOK-HIM** (in Chinese): *President, I have recently received complaints from members of the public that on the same day after they submitted their resumes to employers via electronic mails when seeking jobs by using the Interactive Employment Service (iES) of the Labour Department (LD), they received calls from a number of telemarketing companies promoting their products, which caused much disturbance to them. In this connection, will the Government inform this Council:*

- (a) *whether the LD has, in respect of the various employment and recruitment services it provides, taken any measure to ensure that employers will use the personal data of job-seekers collected through posting of recruitment advertisements at the LD only for recruitment purpose; whether the LD had received complaints about the misuse of personal data of job-seekers in the past three years; if it had, of the details of the complaints; the numbers of such complaint cases received in each of the years; and among them, the number of substantiated cases;*

- (b) *given that some of the recruitment information or advertisements released through the LD's various employment and recruitment services are on job vacancies of private employment agencies, whether the LD had received, in the past three years, complaints from job-seekers alleging that those employment agencies did not have actual business operation, or the vacancies listed in the recruitment information or advertisements did not even exist; if it had, of the respective numbers of such complaints it had received in each of the years and the investigation results; and*
- (c) *of the provisions in the existing Personal Data (Privacy) Ordinance (PDPO) (Cap. 486) which are applicable to restricting enterprises, employers or any other persons from the improper keeping and use of personal data of job-seekers collected through recruitment channels; the respective numbers of cases in which prosecutions were instituted for breaching the relevant legislation in each of the past three years; among them, the percentage of convicted cases; the respective maximum and minimum penalties imposed for such cases?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, my reply to the question raised by Mr IP Kwok-him is as follows:

- (a) In providing employment and recruitment services, the LD has the following measures in place to ensure that personal data provided by job-seekers to employers should be used for recruitment purpose only:
  - (i) Employers making use of recruitment service of the LD have to declare in writing for compliance with the PDPO (Cap. 486), and that use of any information collected from job-seekers should be restricted for recruitment purpose only.
  - (ii) Employers can submit vacancy orders to the LD by facsimile or via the iES website. The vetted-in vacancy orders are then posted at job centres and the iES website. The iES system does not provide employers with any access to the personal contact information of job-seekers.

- (iii) In browsing vacancy information of iES, job-seekers are reminded under the "Points-to-note" session to take heed of employment traps, including careful handling of personal data in making job applications. In case of doubts, job-seekers should contact LD officers as soon as possible so that immediate follow-up action can be taken.
- (iv) If a complaint against an employer is made on the suspected use of information collected through the registered vacancies of the LD other than for the purpose of recruitment, the LD will take immediate follow-up action and conduct investigation. The LD will approach both the complainant and the employer concerned to better understand the situation, and investigate whether the employer has breached the terms and conditions for using the recruitment service of the LD. In the course of investigation, vacancy orders concerned may be removed from display if the situation warrants. Employers of substantiated complaints would not be offered further recruitment service and the job-seekers concerned would be advised to approach the Office of the Privacy Commissioner for Personal Data for further assistance.

In the past three years, the LD received two complaints involving suspected improper use of personal data provided by job-seekers. Both complaints were received in the first half of this year. After investigation, the complaints were not substantiated.

The concerned complainants alleged that after their submission of resumes by emails to the employers with vacancies posted on iES, they received more telephone calls from marketing companies. They suspected that their personal data had been leaked to outsiders. Since both cases involved job vacancies offered by employment agencies, the complainants were also concerned whether there were measures in place to ensure that employment agencies were using the recruitment service of the LD properly.

As regards the two complaints, the LD immediately contacted the complainants to obtain further information for investigation. The LD also provided them with detailed information on the points to be

noted by employment agencies using the LD's recruitment service and the requirements concerned to enable the complainants to better understand their rights in this respect. After investigation, both cases were not substantiated owing to a lack of sufficient evidence to prove that their personal data had been leaked by the agencies.

Nonetheless, the LD advised the agency involved in one of the complaints to observe the requirements for using the LD's recruitment service, and that personal data provided by job applicants should be used for recruitment purpose only. For the other case, further investigation could not be made as the complainant was not able to provide details of the agency concerned.

- (b) To expedite the dissemination of employment information with a view to helping job-seekers to find suitable jobs as soon as possible, the LD also collects vacancies submitted by employment agencies. Vetting criteria and requirements relevant to employers in general are also applicable to employment agencies. In addition, they are only allowed to submit vacancy orders from their clients who hire employees direct, and that the name of the agency concerned must be shown on their vacancy orders posted on iES.

In the past three years, there had not been complaints from job-seekers on employment agencies that are not genuinely in operation, or on bogus vacancies placed which did not lead to placements.

- (c) Under the PDPO (Cap. 486), data users are required to comply with data protection principles (DPPs) 1, 2 and 3 in connection with the collection, retention and use of personal data. DPP 1 provides that a data user should collect personal data by means which are lawful and fair in the circumstances of the case. If a data user, when collecting personal data from a data subject, misleads the data subject on the purpose of collection (for example, using recruitment as a means to mislead the applicant to provide his or her personal data, where the actual purpose of collection is for marketing products), such collection will be considered as unfair collection. DPP 2 provides that a data user shall take all practicable steps to

ensure that personal data is accurate and is kept no longer than necessary. Section 26 of the PDPO further provides that a data user shall erase personal data where the data is no longer required for the original purpose of collection, unless any such erasure is prohibited under the law or it is in the public interest for the data not to be erased. DPP 3 provides that unless with the prescribed consent of the data subject, personal data should only be used for the purposes for which it was to be used at the time of collection or a directly related purpose. If an organization uses the personal data collected during a recruitment exercise for the purpose of marketing products, whether for its own use or transfer to a third party for marketing, such use would constitute a contravention of this principle.

The Privacy Commissioner for Personal Data (PCPD) may serve an enforcement notice on a data user in case of contravention of DPPs and where it is likely that the contravention will continue or be repeated. Under section 64(7) of the PDPO, a data user who fails to comply with an enforcement notice commits an offence and is liable to a fine at Level 5 (\$50,000) and imprisonment for two years. As for contravention of section 26 of the PDPO, it is an offence and the data user is liable to a fine at Level 3 (\$10,000).

To enhance the protection of personal data privacy, the Administration has suggested, in the Personal Data (Privacy) (Amendment) Bill 2011 presented to the Legislative Council on 13 July 2011, to impose heavier penalty for repeated non-compliance with enforcement notices, as well as making it an offence for a person to intentionally do the same act or make the same omission again that constitutes a contravention of a requirement under the PDPO in respect of which an enforcement notice has been issued before. The Bill also introduces specific requirements on the use of personal data in direct marketing.

On the other hand, the PCPD issued the Code of Practice on Human Resource Management (the Code) in 2000. It provides employers with a practical guide on the application of the provisions of the PDPO to employment-related personal data privacy. In connection with the retention and use of personal data collected in recruitment

exercises, Clause 2.10.1 of the Code provides that an employer who has a general policy of retaining personal data of unsuccessful job applicant for future recruitment purposes should not retain such data for a period longer than two years (from the date of rejecting the applicant) unless there is a subsisting reason that obliges the employer to retain the data for a longer period; or the applicant has given prescribed consent for the data to be retained beyond two years. According to Clause 2.5.3.1 of the Code, personal data of an unsuccessful job applicant may only be used in a later recruitment exercise or a directly related purpose, unless the applicant consents to the use in some other purposes. A breach of the Code by a data user will give rise to a presumption against the data user in any legal proceedings under the PDPO, or will weigh unfavourably against the data user in any case before the PCPD.

In the previous three years, the PCPD has not issued any enforcement notices nor referred to the police for criminal investigation any cases on improper retention and use of personal data collected in recruitment exercise.

### **Safety of Census Officers During Visits to Households**

9. **MR WONG KWOK-KIN** (in Chinese): *President, the 2011 Population Census is now underway. It has been learnt that some young female Census officers have been arranged to enter the flats of responding households alone to conduct questionnaire surveys. As each long-form questionnaire takes around 40 minutes to complete, these Census officers are worried about their personal safety, and their family members have the same concern. In this connection, will the Government inform this Council whether Census officers are allowed under the guidelines of the authorities to enter the flats of responding households alone to conduct the survey; if so, of the reasons for that; if not, whether the authorities will expeditiously rearrange the Census officers to conduct the surveys in pairs and make sure that the arrangement concerned will be implemented?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): President, in view of the fact that census questionnaires cover data of individual households and persons, the Census and Statistics Department (C&SD)

normally will not deploy two enumerators to conduct face-to-face interview with the same household to ensure confidentiality of the information gathered. This is consistent with the established arrangement for other surveys conducted by the C&SD. However, under special circumstances where the C&SD considers that it is safer for enumerators to work in pair having regard to the situation of the concerned quarters and its surroundings, the C&SD will deploy two enumerators to work as a team to visit the same unit of quarters and conduct interview.

To ensure personal safety of enumerators, the C&SD has incorporated appropriate coaching in its training courses to raise the safety awareness of enumerators, including the deployment of suitable precautionary measures. Moreover, the C&SD has set up field centres in each district during the census period. Supervisors at the field centres will closely monitor the work progress and itineraries of enumerators and deploy three to four enumerators to work in the same building to ensure the safety of enumerators. Meanwhile, the C&SD has informed the police, property management companies and village representatives, and so on, of the census operation so that they can make appropriate arrangements, including the surveillance for the safety of enumerators.

### **Code of Practice for Mobile Phone Contracts to Protect Consumers**

10. **DR SAMSON TAM** (in Chinese): *President, I have recently received complaints from quite a number of members of the public that when they requested to terminate the contracts for residential broadband network services after moving house as they could not continue to use the services due to a lack of network coverage or insufficient cable capacity in their new residence, they were levied a service charge or fine by the Internet service providers. The Office of the Telecommunications Authority (OFTA) introduced the new Code of Practice (CoP) in February 2010, requiring telecommunications service operators (operators) to waive any fee for the aforesaid circumstances, but the CoP is implemented on a voluntary basis only. In this connection, will the Government inform this Council:*

- (a) *of the number of complaint cases received by the authorities from members of the public in the past two years in relation to the levy of service charge or fine on them upon termination of network service*



*contracts because there was no broadband network coverage in their new residence, as well as the follow-up actions;*

- (b) whether it knows the number of operators which have indicated their willingness to comply with the CoP since its issuance by the OFTA; whether it has assessed if the voluntary CoP can effectively regulate the operators; if the result of the assessment is in the negative, when it will introduce more stringent measures to safeguard consumers' rights, and of the details of such measures; whether it will consider incorporating into the licences upon renewal mandatory provisions to require full compliance by the operators; and*
- (c) given that the authorities issued the consultation paper on the Customer Complaint Settlement Scheme (CCSS) in June 2010, of the progress of the consultation at present and when they will make public the latest consultation outcome?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, the telecommunications market in Hong Kong is developing rapidly with a variety of fixed, mobile and broadband services widely available to consumers in a highly competitive environment. While maintaining a fully liberalized market and a level playing field for the telecommunications industry, the Administration attaches great importance as well to safeguarding the interests of consumers as they use telecommunications services. The OFTA regulates the telecommunications sector under the powers conferred by the Telecommunications Ordinance, and has all along strived to strengthen consumer protection in this regard.

With regard to safeguarding consumer interests, pursuant to the market-led approach and our policy to ensure fair competition, the OFTA would encourage the telecommunications industry to adopt self-regulatory measures through the promulgation of industry standards. Nevertheless, the OFTA will consider adopting mandatory regulatory measures that are more stringent if the problems persist.

In respect of telecommunications service contracts, the OFTA issued in February last year the CoP for Communications Service Contracts. It sets out the best practices on drawing up service contracts for the reference and voluntary

adoption by the industry. Since then, the OFTA had been in active discussion with the telecommunications industry on how the relevant measures could be implemented to enhance consumer protection. In December last year, the Communications Association of Hong Kong, an industry organization, issued in collaboration with all the major operators the Industry Code of Practice for Telecommunications Service Contracts (the Industry Code), after taking into account the key measures recommended in the OFTA's CoP and the operating environment specific to the telecommunications industry. The Industry Code provides guidelines on drawing up telecommunications service contracts for personal or residential users and includes measures to improve the existing contract forms, sales practices and arrangements ranging from renewals to terminations. The Industry Code is being implemented on a self-regulatory basis by the operators.

My reply to the question raised by Dr TAM is as follows:

- (a) From 2009 to May this year, the number of complaints received by the OFTA in respect of persistent service charges in the case of service being unable to cover the relocated address, with a breakdown of fixed telephone and broadband Internet access services, is set out below:

<i>Year</i>	<i>Number of complaints on fixed telephone services</i>	<i>Number of complaints on broadband Internet access services</i>
2009	2	9
2010	30	153
2011 (January to May)	7	80

The number of complaints rose significantly in 2010 as compared to that in 2009 since a number of fixed network operators altered their service relocation arrangements in 2010 and required their customers to pay the service charges for the remaining contract period even if the service failed to cover the relocated address. Upon receipt of relevant complaints from consumers, the OFTA had all the way worked to mediate disputes between the consumers and operators. Such efforts include referring the complaint cases to the operators and requesting them to handle the cases properly. All the aforesaid

complaint cases had been referred to the concerned operators for follow-up. To our understanding, the complainants of all these cases have accepted the solutions offered by the operators. Moreover, in accordance with the Industry Code, participating operators have agreed to include terms in newly signed contracts which would ensure that customers would not need to pay the service charges for the remaining contract period should they terminate the service due to unsuccessful relocation.

- (b) At present, a total of 11 operators (including all the major fixed and mobile network operators and one major external operator) have agreed to adopt the Industry Code<sup>(1)</sup>. These operators together have a market share of over 98% each for the fixed telephone services, broadband Internet access services and mobile communications services. Since the issue of the Industry Code in December last year, all of the participating operators have one after another completed the preparatory work in line with the requirements in the Industry Code, including the revision of their contract forms, service platforms as well as sales and internal supporting procedures. Starting July this year, the participating operators would have implemented the necessary measures to ensure that all new contracts

- (1) The following operators (including fixed, mobile and external telecommunications operators) have agreed to adopt the Industry Code (in alphabetical order):

- China Mobile (Hong Kong) Co. Ltd
- City Telecom (Hong Kong) Limited
- CSL Limited
- Hong Kong Broadband Network Limited
- Hutchison Telecommunications Hong Kong Holdings Limited
- i-CABLE
- New World Mobility Limited
- New World Telecommunications Limited
- PCCW
- SmarTone-Vodafone
- Wharf T&T

signed with their personal or residential customers comply with the provisions of the Industry Code. As mentioned above, one of the provisions in the Industry Code seeks to ensure fairer arrangements for service relocation requests made by customers.

The implementation of the Industry Code represents the proactive efforts of the telecommunications industry in meeting the expectations of the public to enhance consumer protection. We are confident that the Industry Code will promote good sales practices and customer services to better safeguard the interests of consumers. It will also address contractual-related complaints and disputes more effectively.

The OFTA will monitor closely the progress and effectiveness of the Industry Code. It will continue to work closely with the industry and evaluate the need for further enhancing the Industry Code in future, taking into account the experience of operators in implementing the Industry Code and the feedback from consumers. In addition, the OFTA will consider as appropriate other measures for resolving consumer complaints on telecommunications services. It will not rule out the possibility of adopting more stringent regulatory measures, including the imposition of additional licence obligations on consumer protection for the mandatory compliance by operators.

- (c) In June 2009, we briefed the Legislative Council Panel on Information Technology and Broadcasting (the Panel) on the progress of a pilot programme for the CCSS administered by the OFTA. The pilot programme ended in February last year.

In June last year we submitted another discussion paper to the Panel on the proposed way forward for the CCSS. The OFTA also conducted a consultation exercise in the same month to seek the views of the public and the industry on issues relating to the implementation of the CCSS on a long-term basis. The consultation period ended in December last year with 13 submissions received from the industry (including 10 telecommunications operators and an industry association) and other parties (including the Consumer Council and a solicitor firm).

Having regard to the outcome of the consultation, the OFTA is evaluating different options including exploring actively with the industry on the feasibility of setting up a voluntary industry scheme. Once the way forward is firmed up, we will report the details to the Panel.

### **Measures to Combat Couriering of Controlled Items from the Mainland to Hong Kong**

11. **MR VINCENT FANG** (in Chinese): *President, I have received complaints from the industry about the increasingly serious situation of people purchasing products or foods (including vegetables, fruits, eggs and meat that are subject to respective export and import control on the Mainland and in Hong Kong) on the Mainland and then bringing them back, by adopting the "ants moving home" tactics, to Hong Kong for sale. In this connection, will the Government inform this Council:*

- (a) *of the respective daily average numbers of Hong Kong residents and Mainland visitors under the Individual Visit Scheme crossing the boundary via various control points in Hong Kong and Shenzhen in the past 12 months, as well as the percentage changes in each month; whether statistics have been compiled on the respective numbers of people entering the territory twice a day or more; whether the authorities will inspect one by one the items carried by those persons who enter the territory twice a day or more;*
- (b) *of the measures adopted by the staff at boundary control points to check whether persons entering the territory bring in items which are subject to import control (including endangered species, uncooked meat, birds and vegetables, and eggs, and so on); of the number of persons found by staff at boundary control points to have brought such items into the territory last year; of the types, quantities and weights of the items involved; whether the authorities had instituted prosecution against or given warnings to these persons, and how the seized items were disposed of; how the authorities verified claims that such items which are subject to import control were brought into the territory only for personal*

*consumption; whether follow-up actions would be taken to find out if these persons had subsequently put the items on sale; whether they have any plan to regulate the bringing into the territory by visitors items which are subject to import control in Hong Kong; and*

- (c) *given that quite a number of members of the public of Hong Kong have complained that the areas adjacent to Mass Transit Railway (MTR) stations are often occupied for use as distribution points for the aforesaid items, thus creating serious environmental hygiene problems, of the measures the authorities have in place to deal with the situation?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, since Hong Kong imports over 90% of its food, the Government is committed to enhancing the safety of imported food to protect public health. The import of game, meat and poultry is regulated under existing legislation. Under the Imported Game, Meat and Poultry Regulations (Cap. 132AK), no person shall import meat or poultry without an official health certificate which certifies that the meat or poultry concerned is fit for human consumption, unless a prior written permission from the Director of Food and Environmental Hygiene (DFEH) is granted. No person shall import game or prohibited meat<sup>(1)</sup> except with a written permission and subject to such conditions as the DFEH may impose. In addition, under the Import and Export Ordinance (Cap. 60), an import licence from the DFEH is required for importing meat or poultry.

(1) Prohibited meat means any kinds of meat listed below:

- (a) Scrap meat, that is to say, meat which consists of scraps, trimmings or other pieces (whether with or without bone) of such shape or in such condition as to afford insufficient means of identification with a definite part of a carcass.
- (b) Meat comprising the wall of the thorax or abdomen from which there has been detached any part of the pleura or (save in the case of meat derived from a pig) the peritoneum, other than a part necessarily removed in preparing the meat.
- (c) Meat, other than mutton and lamb, from which a lymphatic gland, except a gland necessarily removed in preparing the meat, has been taken out.
- (d) The head of an animal without the submaxillary gland.

The Centre for Food Safety (CFS) collects about 65 000 food samples for testing at import, wholesale and retail level every year. Last year, the overall satisfactory rate of the food tested under the Food Surveillance Programme was 99.7%, reflecting that food safety in Hong Kong is maintained at a high level. The CFS will take enforcement action if any food is found and confirmed to be unfit for human consumption in food surveillance. Under the Public Health and Municipal Services Ordinance (Cap. 132), any person who sells any food unfit for human consumption shall be liable to a fine of \$50,000 and imprisonment for six months.

The Food Safety Ordinance (Cap. 612), which will commence on 1 August 2011, introduces the food traceability mechanism. It complements the CFS' existing Food Surveillance Programme and will further enhance food safety by protecting the whole food supply chain.

According to the Food Safety Ordinance, any person who carries on a business which brings any food into Hong Kong (including any person who brings food from the Mainland into Hong Kong for sale with the "ants moving home" tactics) is required to register with the DFEH. Since those who import food from unknown sources usually would not register under the law, they are liable to the offence of importing food without complying with the registration requirements.

The Food Safety Ordinance also stipulates that the DFEH must keep a register of food importers and food distributors for public inspection. The public may therefore inspect the register at any time to find out the status of their trading partners to avoid purchasing food from unknown sources, thus protecting consumers and food traders.

In addition, food importers and food distributors must also comply with the record-keeping requirement as required under the Food Safety Ordinance (retailers are required to keep food acquisition records only). Any person whose transaction records do not dovetail commits an offence. As the records of sellers of food from unknown sources would unlikely dovetail with each other, the food traders concerned may commit an offence.

The Food Safety Ordinance also empowers the Secretary for Food and Health to make regulations for import control on specific food types, with a view to strengthening the control on food with higher risks. We propose that the

import control be extended to cover poultry eggs and aquatic products. The proposal on the regulation of poultry eggs has been submitted to the Legislative Council Panel on Food Safety and Environmental Hygiene in May this year.

In view of the above, it is therefore clear that the whole food supply chain is under comprehensive surveillance in the existing food safety framework, which includes effective measures targeting food products from unknown sources, thus protecting public health. My reply to the different parts of the question is as follows:

- (a) According to the information provided by the Security Bureau, in the 12 months from July 2010 to June 2011, the respective daily average numbers of Hong Kong residents and Mainland visitors under the Individual Visit Scheme crossing the boundary via various control points in Hong Kong and Shenzhen, as well as the percentage changes in each month are set out in the table below. The Administration does not compile statistics on the number of people entering and departing from Hong Kong for multiple times within the same day.

<i>Year/Month</i>	<i>Daily average number of Hong Kong residents crossing the boundary via various control points in Hong Kong and Shenzhen</i>	<i>Percentage change compared with last month</i>	<i>Daily average number of Mainland visitors under the Individual Visit Scheme crossing the boundary via various control points in Hong Kong and Shenzhen</i>	<i>Percentage change compared with last month</i>
July 2010	375 018	-	70 087	-
August 2010	392 019	4.5%	88 911	26.9%
September 2010	371 061	-5.3%	58 593	-34.1%
October 2010	375 892	1.3%	73 712	25.8%
November 2010	374 780	-0.3%	67 618	-8.3%
December 2010	388 828	3.7%	81 576	20.6%
January 2011	366 169	-5.8%	96 866	18.7%
February 2011	366 946	0.2%	75 950	-21.6%
March 2011	376 091	2.5%	70 703	-6.9%
April 2011	429 310	14.2%	76 328	8.0%
May 2011	369 537	-13.9%	75 833	-0.6%
June 2011	364 977	-1.2%	68 731	-9.4%



- (b) To interdict illegal import of controlled items by travellers, the Customs and Excise Department (C&ED) applies the risk management intelligence-based principle in inspecting travellers and their baggages with the assistance of advanced equipment. In addition, the C&ED works closely with other law enforcement departments, such as the Food and Environmental Hygiene Department (FEHD) and the Agriculture, Fisheries and Conservation Department (AFCD) in mounting joint operations to inspect travellers and their baggages, with a view to combating illegal import of controlled items at various control points. Random inspections on travellers are conducted by the FEHD with the assistance of detector dogs to combat illegal import of meat and poultry. The FEHD also distributes leaflets and displays relevant posters at the halls of various control points to remind travellers to abide by the law.

According to the C&ED, the categories, quantities or weight of controlled items, including endangered species, uncooked meat and live animals and birds seized in the past 12 months at various control points are as follows:

<i>Category</i>	<i>Quantity/Weight</i>
Endangered species	637 pieces
Uncooked meat	6 847 kilograms
Live animals and birds	36 live animals and birds

Upon detecting illegal import of the above controlled items by travellers into Hong Kong, Customs officers will immediately hand over the cases and the seizures to the relevant departments for follow-up actions. Over the past 12 months, the FEHD prosecuted 1 491 travellers for bringing in game, meat or poultry illegally at the various control points in Hong Kong and Shenzhen, and destroyed the food concerned. In the same period, the AFCD also prosecuted 63 persons who illegally imported endangered species and forfeited the items concerned in accordance with the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586).

Under the existing legislation, control has already been imposed on the import of controlled items into Hong Kong by travellers. Under section 6(1)(ca) of the Import and Export (General) Regulations (Cap. 60A), the conditions for articles exempted from application for import licence for controlled food products (namely, meat and poultry) are as follows:

- "(i) imported in the accompanied personal baggage of a person entering Hong Kong;
- (ii) for the personal use of that person or is a gift;
- (iii) in an amount not exceeding 15 kg; and
- (iv) accompanied by an official certificate as defined in the Imported Game, Meat and Poultry Regulations."

As such, travellers will not be exempted from application for import licence by solely claiming that the food brought in is for personal consumption.

- (c) The FEHD has stepped up street cleansing services as well as law-enforcement action at the public place outside the Sheung Shui MTR Station. If an article placed at public places causes obstruction to scavenging operations, the FEHD will serve upon the owner a "Notice to Remove Obstruction" in accordance with the Public Health and Municipal Services Ordinance requiring removal of the article within a period specified in the notice, failing which the FEHD will take prosecution action. For any person who litters, contravening the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570), the FEHD will issue a \$1,500 Fixed Penalty Notice to the offender. During the first half of 2011, a total of 129 Fixed Penalty Notices have been issued at the public place outside the Sheung Shui MTR station.

**Regulation of Operation of Cross-boundary Coach Services**

12. **DR PRISCILLA LEUNG** (in Chinese): *President, I have received complaints from a number of members of the public that nearly 200 trips of cross-boundary coaches (CBC) are operated by a number of bus companies each day in the area of Playing Field Road and Portland Street in Kowloon, causing traffic congestion, endangering the safety of pedestrians as well as creating problems such as serious noise nuisances and vehicular emissions in the community. In addition, some members of the public even queried why these CBC companies are not subject to any regulation and can freely set up pick-up/set-down points on the street, thereby creating even more serious problems in the community. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have, apart from Lok Ma Chau — Huanggang Cross-boundary Shuttle Bus (Shuttle Bus) Service, regulated the operation of other CBC services (including the locations of pick-up/set-down points and coach frequencies, and so on); if they have, of the government departments which are responsible for monitoring such operation and the details; if not, the reasons why this type of public transport services operating on a commercial basis is not regulated by the law;*
- (b) *whether the authorities have compiled statistics on the number of locations in various districts in the territory which are currently used as CBC terminals; among them, of the number of those for which formal approval has been granted by the Government; whether they have examined if the remaining ones have been set up illegally, and whether such a situation involves any grey area in the law;*
- (c) *whether the Government had, in the past five years, taken any follow-up actions (such as requesting the immediate removal of the pick-up/set-down points or instituting prosecutions) against those CBC companies which were found to have illegally occupied the roads to set up pick-up/set-down points; if it had, of the details;*
- (d) *whether the Government had, in the past five years, received any complaints from the public regarding the noise nuisances, vehicular*

*emissions or street obstruction caused by CBC stops; if it had, of the number and the subject of such complaints (with a breakdown by year set out in table form); and*

- (e) *whether the authorities will consider making reference to the existing means of regulating the operation of residents' service coaches to handle and rationalize the provision of CBC services?*

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

- (a) CBC services, including Lok Ma Chau/Huanggang short-haul CBC services, Shuttle Bus services and other long-haul CBC services, are non-franchised bus services, regulated by the passenger service licences (PSLs) issued by the Commissioner for Transport (C for T) under section 27 of the Road Traffic Ordinance (the Ordinance) (Cap. 374) and its subsidiary legislation. The operation of CBC services within Hong Kong must comply with the licensing conditions for non-franchised buses, PSL conditions and operating conditions for CBC. Furthermore, such services must be operated in accordance with the routes, pick-up/drop-off points and frequencies specified in the corresponding schedules of service attached to the PSLs.

When a CBC operator has contravened any aforementioned conditions (including the operational details specified in the schedules of service), the C for T may conduct an inquiry against the PSL holder. If non-compliance with the Ordinance or licensing conditions is established by the inquiry, the PSL holder will be liable to penalty measures including suspension or cancellation of the PSL, suspension or cancellation of the PSL in respect of the vehicles concerned, or variation of the PSL in respect of the routes, approved purposes or number of vehicles stated in the PSL pursuant to section 31 of the Ordinance. If the pick-up/drop-off point or operation concerned involves road safety problems or contravention of the Ordinance, the Transport Department (TD) will refer the case to the police for the latter to consider taking suitable enforcement action.

Apart from the Ordinance and operating conditions mentioned above, the frequencies of CBC services are also subject to regulation under the CBC quota system jointly administered by the Hong Kong and Mainland authorities, to ensure smooth traffic and safe operation of the control points. If CBC are found to have overrun their scheduled frequencies, the governments of the two places will issue warning to the operator, temporarily suspend or cancel the quotas concerned, as appropriate.

- (b) The pick-up/drop-off points of CBC within Hong Kong are suggested by the operators according to passenger demand to the TD for approval. When vetting the applications, the TD will consider the proposed locations with regard to factors such as convenience to passengers, ancillary facilities, road safety and traffic conditions, and consult relevant government departments. District consultation will also be conducted in order to balance, as far as possible the demand for CBC services with the requests of the locals. According to the TD's records, there are a total of 137 enroute stops and termini for long-haul CBC (excluding Lok Ma Chau/Huanggang short-haul CBC and Shuttle Bus) within Hong Kong.

CBC can only pick up or drop off passengers at designated pick-up/drop-off points, otherwise they may contravene the licensing conditions for non-franchised buses, PSL conditions and related schedules of service, as well as operating conditions for CBC. As mentioned in part (a) of the reply, the TD and the police can take appropriate penalizing or enforcement actions pursuant to the relevant provisions in the Ordinance.

- (c) Over the past five years since 2007, the TD has handled 16 cases involving the setting up of pick-up/drop-off points for CBC without approval. With regard to these cases, the TD has urged the operators concerned in writing to stop the non-compliant operation and to provide passengers with coach services at the pick-up/drop-off points specified in the schedules of service. The TD will also step up inspection of the operation of the operators concerned at these locations. If the pick-up/drop-off points involve road safety problems or contravention of the Ordinance, the TD will refer the case to the police for appropriate enforcement action.

Among the 16 cases handled, the operators involved in eight cases have ceased unauthorized operation. In seven cases, the operators concerned have identified suitable locations nearby for setting up pick-up/drop-off points, and have made or will make formal applications to the TD. As for the only remaining case, that is, the problem caused by unauthorized pick-up/drop-off activities around Playing Field Road, the TD has asked the operators concerned in writing to stop the non-compliant operation, and will consider conducting an inquiry against the operator if appropriate.

In addition to CBC, the area around Playing Field Road is a popular pick-up/drop-off point for other vehicles (including local tour buses). There may therefore be traffic congestions during peak hours. The TD and the police had met with district councillors and operators concerned to discuss the problems and possible improvement measures, for example, adjusting the service schedules of CBC based on actual demand to reduce the number of coaches picking up/dropping off passengers at that location at the same time; considering increasing the number of pick-up/drop-off points in the vicinity. The TD will monitor and review the actual traffic condition around Playing Field Road and actively explore more comprehensive and viable improvement measures, to regularize the CBC services at these locations and minimize the impact on other road users. The police will also step up patrol at this location, and will take appropriate enforcement action in case unauthorized pick-up/drop-off activities have led to traffic obstruction.

- (d) The numbers of complaints relating to CBC stops received by the Government in the past five years are tabulated below:

	<i>Noise Nuisance</i>	<i>Coach emission nuisance</i>	<i>Obstruction to pedestrians and traffic*</i>	<i>Total</i>
2007	2	6	3	11
2008	3	9	13	25
2009	2	3	19	24
2010	5	5	19	29
2011 (as at 30 June)	2	10	12	24

Note:

\* The complaint figures only include data kept by the TD.

- (e) Both CBC services and residents' services belong to non-franchised bus services. Both operations are subject to regulation by the PSLs issued by C for T under section 27 of the Ordinance and its subsidiary legislation, which means that the services must comply with the licensing conditions for non-franchised buses, PSL conditions, and follow the routes, pick-up/drop-off points and frequencies specified in the PSL schedules of service. The operation of CBC services within Hong Kong is therefore regulated in the same manner as residents' services. In addition, CBC services have to be operated in accordance with the operating conditions for CBC.

The Government will try as far as possible to provide off-street termini for CBC at suitable locations, with a view to providing safer services and better passenger facilities, and minimizing the impact of CBC operation on the environment and residents in the neighbourhood.

### **Asbestos Assessments Under Operation Building Bright**

13. **DR LEUNG KA-LAU** (in Chinese): *President, regarding the Secretary for Development's reply on 16 February this year to a question on the removal of asbestos materials under the Operation Building Bright (OBB), will the Government inform this Council:*

- (a) *given that the Government only indicated in its reply, "[U]p to the end of 2010, the EPD [Environmental Protection Department] has conducted initial assessment for about 1 400 target buildings and confirmed that about 1 100 buildings contain asbestos containing material." and "[T]he EPD has also sent staff to the abovementioned buildings to carry out assessments and inspections for about 1 500 times", whether the authorities will further publish the list of the target buildings which are subjected to asbestos assessment and confirmed to contain asbestos materials and were inspected by Environmental Protection Department (EPD) staff for the purpose of asbestos material removal works, to let workers and members of the public become aware of the relevant information and take*

*precautions accordingly before carrying out maintenance for the target buildings; if not, of the reasons for that; and*

- (b) *whether the Labour Department (LD) and the EPD have collected air samples for testing in the target buildings to ascertain that there is no risk of inhaling asbestos fibres by the workers when carrying out the works; if not, of the reasons for that; if yes, the dates, times and locations of taking air samples, the sampling and testing methods, number of tests conducted, number of samples taken and the test results (including the types of asbestos contained in the samples and the level of asbestos content in the air of the work sites); if it cannot provide such information, the reasons for that?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, works involving asbestos are stringently regulated by the Air Pollution Control Ordinance (Cap. 311) (the Ordinance) and the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59 sub. leg. AD) (the Regulation).

Same as owners of other private buildings undertaking repair works, owners of target buildings participating in the OBB should comply with the requirements of the Ordinance and the Regulation in the process of arranging building repair. Since the implementation of the OBB, the Hong Kong Housing Society, Urban Renewal Authority, Buildings Department, EPD and the LD have been maintaining close liaison to jointly handle asbestos issues that might emerge during the carrying out of repair works in order to ensure safety. The EPD and the LD will also inspect and exercise control on asbestos works in target buildings.

The reply to the two-part question is as follows:

- (a) After carrying out initial assessment of asbestos-containing materials in the target buildings of the OBB, the EPD will issue letters to the owners of individual units and owners' corporations (OCs) of the buildings concerned to inform them of the assessment results. The Department will explain to owners matters that warrant attention during alteration or demolition of asbestos-containing materials in their premises as well as the requirements regarding employment of



registered asbestos consultants and registered asbestos contractors to handle asbestos abatement works under the Ordinance.

In fact, works of the OBB mainly involve common areas of target buildings, that is, repair and maintenance works relating to building structural components as well as fire safety and sanitary facilities of buildings, and most of the components with confirmed asbestos-containing materials in target buildings are not the abovementioned repair items. Common asbestos-containing materials found in old-style buildings, such as corrugated asbestos cement sheets, will not release asbestos fibres if they are in good conditions and are not disturbed. However, the EPD has reminded OCs that if these materials are to be demolished during the works of the OBB, the works should be carried out in accordance with the requirements of the Ordinance in order to protect public health.

We consider that in carrying out asbestos abatement works, the most important issue is that OCs and owners of the buildings concerned will employ qualified professionals in accordance with the requirements of the Ordinance to adopt effective safety measures through which the safety of households of the buildings, workers and the public can be adequately ensured. In this regard, the EPD has already informed the relevant owners and the Department as well as the LD will also continue to exercise control over the works. We consider it unnecessary to draw up a particular list for these cases and publicize the same. This practice follows the Administration's established arrangement regarding premises inspected for building safety. Besides, we also have to observe the feelings of the owners and occupants of the buildings concerned, and do not wish to create a wrong impression to the public that all these buildings are dangerous.

- (b) From time to time, the LD deploys officers to inspect workplaces involving asbestos work, including target buildings of the OBB. The officers of the LD will inspect the nature and quantity of asbestos materials, work methods for removing asbestos, asbestos control measures and personal protective equipment in use, and so on, to ensure that the work complies with the requirements of the

Regulation. Depending on the nature of the work being conducted at the workplace, the officers of the LD will also collect air samples on site to measure the concentration of asbestos fibre in air so as to evaluate the risk of asbestos exposure of the workers at work. From January 2010 to June 2011, the LD collected a total of 40 air samples from various workplaces over Hong Kong (including target buildings of the OBB). After collecting air samples, the LD conducted tests in accordance with the method stipulated in the Gazette Notice on "Approved method for measuring exposure to asbestos in air" issued by the Department. All the results indicated that the amount of asbestos dust to which the workers were exposed complied with the requirements of the relevant legislation.

Registered asbestos contractors shall also, in accordance with the requirements under the "Code of Practice on Asbestos Control", appoint registered asbestos laboratories to carry out air monitoring for workplaces. The test results would be submitted to the EPD for record. Up to June 2011, the submitted air test results of asbestos abatement works carried out in target buildings of the OBB did not reveal any cases in exceedance of statutory limit. The EPD will continue to follow up on each case involving asbestos in accordance with the Ordinance in order to ensure public health.

### **Appointment of Multimedia Production Companies to Undertake Government-funded Projects**

14. **MR ALBERT HO** (in Chinese): *President, it has been learnt that ePlus Communications Limited (ePlus), a subsidiary of the Internet Professional Association (IProA), produced a website for the Chief Secretary for Administration, and ePlus also has close connections with Letlink Technology Limited (Letlink), Chinese World Ventures Limited (CWV), China Multi Media Resources Limited (CMMR) and Portal Health International Limited (PHI); and that a company named TOOB Creative Workshop Limited (TOOB) was appointed by the Government to carry out work on analysing or disseminating political comments. In this connection, will the Government inform this Council:*

- (a) *whether the Government had appointed the aforesaid companies or organizations (IProA, ePlus, Letlink, CWV, CMMR, PHI and TOOB) to undertake government work or publicly-funded projects in the past five years; if so, of such government work or publicly-funded projects and the respective amounts of public funds involved;*
- (b) *whether it had carried out work on analysing or disseminating political comments on the Internet or related work; if so, whether it had appointed any company or organization to carry out such work; if it had, of the names of those companies or organizations and the amounts of public funds involved; and*
- (c) *whether it will, in deciding the companies or organizations to be appointed for undertaking government work or publicly-funded projects, take into account the political background of the members of those companies or organizations?*

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

- (a) In the past five years, the Government has procured in accordance with the laid down government procurement procedures the following services from the IProA and Letlink:

<i>Year</i>	<i>Name of Company/Organization</i>	<i>Particulars</i>	<i>Amount</i>
2010	Letlink	Creating QR-Codes for Government House Open Day	\$30,000
2008	IProA	Advertisement for 2008 Voter Registration Campaign in IProA Annual Report 2007	\$9,800

There is no record of the Government procuring services from the remaining five companies or organizations in the past five years.

- (b) Some bureaux/departments keep in view the views expressed by citizens on media platforms. However, the Government has not engaged outside companies/organizations to "work on analysing or disseminating political comments on the Internet or related work".
- (c) The political background of the members of bidding companies or organizations is not one of the factors that Government takes into account in deciding whether such companies or organizations should be awarded a government contract. As a general rule, procuring departments shall award contracts to tenderers who fully comply with the technical specifications, terms and conditions laid down in the tender documents; who are technically and financially capable of undertaking the contracts; and who offer the lowest prices. If a marking scheme is used to assess bids, the procuring department shall award the contract to the bidder who attains the highest overall score.

### **Occupation by Highways Department of Open Spaces near Richland Gardens in Kowloon Bay**

15. **MR ALAN LEONG** (in Chinese): *President, recently, it has been reported that three "open spaces" sites at Wang Kwong Road and Wang Chiu Road near Richland Gardens (respectively located at its western, northern and north-eastern sides) in Kowloon Bay, have been occupied by the Highways Department (HyD) as temporary work depots for a long time, causing air and noise pollution. In this connection, will the Government inform this Council:*

- (a) *of the locations of all temporary sites or depots of government works in the territory at present, the residential premises (estates, buildings or villages) nearest to such sites, the dates on which they were first deployed for such uses and the initial expiry dates for such deployments, the subsequent dates on which such deployments were extended each time, as well as the expiry dates of the current deployments of such sites (to be listed in the table below);*

<i>Locations of the temporary sites or depots of government works</i>	<i>Residential premises nearest to the temporary sites or depots of government works</i>	<i>Dates on which they were first deployed for such uses and the initial expiry dates for such deployments</i>	<i>Subsequent dates on which such deployments were extended each time</i>	<i>Expiry dates of the current deployments of such sites</i>

- (b) *as the aforesaid three sites have been used by the HyD as temporary work depots since 1996 and 2002 respectively, among which the longest duration of use to date has reached 15 years, whether the Lands Department (LandsD) has looked for alternative sites in other locations in the interim to relocate the aforesaid temporary work depots; if it has, of the details; if not, the reasons for that;*
- (c) *as it has been learnt that the aforesaid two sites located respectively on the northern and north-eastern sides of Richland Gardens have been zoned as "district open spaces" since 1986, but the Leisure and Cultural Services Department had all along not yet developed the sites for leisure use over a period of almost 30 years in the past, of the reasons for that;*
- (d) *as it has been reported that some residents in Richland Gardens are deeply discontented that the aforesaid sites have been used as temporary work depots for a long time instead of being developed for leisure use, of the measures of the authorities to respond to the requests of such members of the public;*
- (e) *as road maintenance works are one of the long-term and recurrent undertakings of the HyD, and the construction plant and various materials (including sand and concrete) of such works must be stored in work depots in different areas to facilitate deployment and for use in handling contingencies, whether the Government will set up long-term and fixed work depots for the HyD; if it will, of the details; if not, the reasons for that; and*

- (f) *whether the authorities have in place a mechanism or guidelines for assessing the impact on the daily lives of the residents nearby when selecting the locations of temporary sites or depots of government works; if they have, of the details; if not, whether they will consider establishing such mechanism or guidelines?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, apart from the land on which the works associated with public works projects are located, works departments may also require land outside the project area for temporary storage of materials, parking of works vehicles and machinery, and operation grounds for site personnel.

Works departments will submit requests to the LandsD with due regard to the need of individual projects. The LandsD will then help the works departments identify suitable lands. To optimize land uses, the LandsD normally proposes sites with limited development potential (for example, the space under bridges) or which are yet to be developed, for use as temporary work depots. Before granting the land allocations or renewing the land allocations to the works departments for temporary usage, the LandsD will consult the relevant government departments, including the respective District Offices to canvass the views of the local community. Furthermore, the LandsD will impose suitable conditions into the temporary land allocations as may be required by the government departments, for compliance by the works departments.

My consolidated reply to the six parts of the question is as follows:

- (a) In view of the large number of public works projects and the fact that the number of temporary land allocations will vary according to the progress of these projects, the LandsD estimates that about 760 temporary land allocations have been granted to works departments at the present moment. However, the LandsD does not have the detailed information of the temporary land allocations in hand. The respective District Lands Offices are not able to check the details of individual land allocation records and compile the necessary information within such a short time.

- (b) The three sites near the Richland Gardens referred to in the question have been allocated to the HyD since 1996 and 2002 respectively for use as temporary work depots for the road maintenance project in Kowloon East. The LandsD has not received any objection to the proposed land allocations when consulting the departments concerned.

The HyD has selected these sites because of their central location in East Kowloon. The nearby run-ins also allow construction vehicles quick access to the trunk roads in East Kowloon and, in particular, enable speedy mobilization of workers to sites for carrying out emergency works. As a large amount of road maintenance works are carried out in Kowloon East each year involving the use of many construction plant, vehicles and materials, and so on, and a large number of construction personnel, temporary work depots with sufficient size is required to support the maintenance operation.

- (c) Although two of the sites located at the northern and north-eastern sides of Richland Gardens have been zoned as "district open spaces", according to the information provided by the Leisure and Cultural Services Department, there is no urgent need for the open space project as there are quite a number of recreational facilities available to the public in the vicinity, including Kowloon Bay Park, Kowloon Bay Sports Ground, Kowloon Bay Playground and Kwun Tong Road Children's Playground.
- (d) The Administration has only allowed the HyD to continue to use the three sites as its temporary work depots after careful consideration. To address the concerns of the residents of Richland Garden over the environmental impact of these temporary sites, the HyD has reviewed the situation and requested the contractors to strengthen the relevant mitigation measures, including relocation of the storage areas away from the residential premises as far as possible; proper covering of stored materials to prevent dust emission; avoiding the carrying out of noisy operations in the early morning or at night; regular inspection of the drainage system to prevent accumulation of stagnant water; and carrying out more planting to beautify the environment. The HyD has also met with the representatives of the

Richland Gardens' residents on 23 June to brief them on the improvement measures implemented at the three temporary work depots. The HyD will continue to liaise closely with them to understand and address their concerns.

- (e) Apart from making use of temporarily allocated lands as work depots, the HyD has been considering the possibility of establishing permanent work depots. However, many lands in the urban areas are either already designated for other uses or developed. It is very difficult to identify sites that are suitable for use as permanent work depots while meeting the HyD's requirements. The HyD has also considered utilizing the spaces under bridges. However, such spaces are usually subject to area and height constraints or are already used for greening purpose. They are therefore not suitable for use by the East Kowloon road maintenance project.

The HyD will continue to actively explore the possibility of establishing permanent work depots. Given the scarcity of land in Hong Kong, difficulty is anticipated in finding permanent work sites. Where circumstances permit, the HyD will opt to use lands that are yet to be developed for use as its temporary work depots, as this is a more effective and flexible way of utilizing vacant Government land resources.

- (f) On receiving a temporary land allocation application, the LandsD will consult the relevant government departments (including the Home Affairs Department, the Environmental Protection Department, and so on). These departments will consider carefully such factors as the impact of the temporary land use on the nearby traffic as well as the ambient air and noise situation. The LandsD will only allocate the site to the works department for temporary use after securing agreement of the departments concerned. The LandsD will also include suitable conditions in the temporary land allocation as may be requested by the government departments, with a view to minimizing the impact of the temporary work depots on the public.



**Risk of Contamination of Auxiliary Medical Devices by Plasticizers**

16. **DR JOSEPH LEE** (in Chinese): *President, it has been reported that some Taiwanese academics found, in testing auxiliary medical devices (for example, blood bags and infusion bags) earlier, that Polyvinylchloride (PVC) materials could easily release plasticizers, and the concentration was at an exceedingly high level. As PVC materials are widely used in medical supplies, Hong Kong is equally exposed to the risk of contamination by plasticizers. It has also been reported that when fatty solutions (for example, chemotherapy drugs and blood, and so on) come into contact with auxiliary medical devices containing PVC materials, more plasticizers will be released, which may be transmitted into the body through these medical devices and may cause more serious harm than consuming food contaminated by plasticizers, in particular to premature babies, chronic patients and patients with severe illness. In this connection, will the Government inform this Council:*

- (a) whether the authorities know if, at present, there are auxiliary medical devices in Hong Kong which contain PVC materials; if there are, set out such devices by type;*
- (b) whether the authorities have tested the level of plasticizers contained in auxiliary medical devices commonly used in Hong Kong, to ensure that the devices are not contaminated by plasticizers; if they have, of the standards and criteria adopted by the authorities for testing such devices; if not, whether they will conduct such tests to address the concerns of the public; and*
- (c) whether the authorities have explored using alternatives to auxiliary medical devices containing PVC materials, which may have the risk of being contaminated by plasticizers; if they have, of the details; if not, whether they will consider conducting studies?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, di (2-ethylhexyl) phthalate (DEHP) is widely used as a plasticizer for PVC products. PVC is used in various consumer products such as imitation leather, rainwear, footwear, upholstery, flooring, wire and cable, tablecloths, shower curtains, food

packaging materials, medical equipment and children's toys. Besides, DEHP is also one of the common environmental contaminants in air, water, soil and food.

Although animal studies showed possible health effects after long-term exposure to high dose DEHP, the United States survey results showed that finding a detectable amount of DEHP metabolites in urine did not indicate an adverse health effect on human. According to scientific literature, plasticizers have been detected in blood or urine samples of most people in various parts of the world (for example, the United States, Germany).

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

(a) Plasticizers are purposely added to PVC-made medical devices to make them softer, more flexible and easier to use. Otherwise, medical devices may cause discomfort to patients and even damage to their bodies. PVC-made medical devices that may contain DEHP as plasticizers include:

- Intravenous (IV) bags and tubing;
- Blood bags and infusion bags;
- Enteral nutrition feeding bags;
- Nasogastric tubes; and
- Peritoneal dialysis bags and tubing.

(b) and (c)

International medical device control authorities have indicated that there is no scientific evidence so far to suggest that medical devices plasticized with DEHP present an unacceptable health risk to humans. In addition, given the important clinical benefits of these medical devices, critical medical procedures should not be avoided simply because of the possible health risks associated with DEHP.

While alternatives to DEHP have been used for some medical devices in the market, studies on the health risks of such alternatives are very limited. Before using devices containing alternatives to DEHP in specific medical procedures, there should be adequate data on their safety and efficacy.

To conclude, regulatory authorities all over the world consider that the benefits of medical devices plasticized with DEHP outweigh the risks for patients according to the information available so far. Hence, they are still the popular choice in the market. We will continue to keep abreast of the situation and the relevant studies in other places and take actions as appropriate to safeguard public health.

### **Statistics on Household Income and Expenditure**

17. **DR DAVID LI:** *President, the "2009-2010 Household Expenditure Survey and the Rebasing of the Consumer Price Indices" (2009-2010 HES) published in April this year offers up-to-date information on the expenditure patterns of households. Based on the 2009-2010 HES results, the 2009-2010-based Consumer Price Index (CPI)(A), CPI(B) and CPI(C) have been compiled respectively according to the expenditure patterns of households in the various expenditure ranges, and the Composite CPI has been compiled based on the expenditure pattern of all the households taken together. Separately, the "Quarterly Report on General Household Survey" publishes, on a quarterly basis, the overall median household income. In this connection, will the Government inform this Council:*

- (a) of the median and average monthly expenditures of households in 1999-2000, 2004-2005 and 2009-2010, by households in the respective expenditure ranges of CPI(A), CPI(B) and CPI(C);*
- (b) of the median and average monthly expenditures of households in 1999-2000, 2004-2005 and 2009-2010 with the effects of the Government's one-off relief measures (if any) being removed, by households in the respective expenditure ranges of CPI(A), CPI(B) and CPI(C); and*

- (c) *of the median incomes of households in 1999-2000, 2004-2005 and 2009-2010, by households in the respective expenditure ranges of CPI(A), CPI(B) and CPI(C)?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:**

President, the Census and Statistics Department (C&SD) conducts the HES once every five years. The objective of HES is to collect up-to-date information of household expenditure with a view to providing reference to update the expenditure weights of the CPIs. The latest round of the HES was conducted in 2009-2010. In respect of the statistics on median and average monthly household expenditure classified by CPI expenditure ranges mentioned in parts (a) and (b) of the question raised by Dr David LI, the C&SD indicated that such statistics are not covered under the information compiled from the HES. The information on household expenditure collected from HES was mainly classified by quartile expenditure groups. The median and average monthly household expenditure in 1999-2000, 2004-2005 and 2009-2010 by quartile expenditure groups are set out in the Annex.

The C&SD is also not able to provide the requested figures raised under part (c) of the question. It is because the statistics on the median income of household are not computed under the HES. Besides, though information on household income was collected in the General Household Survey, such relevant statistics are not computed and classified by CPI expenditure ranges.

**Annex**

**Average and median monthly household expenditure by quartile expenditure groups**

	1999-2000				2004-2005				2009-2010			
	<i>The lowest 25%</i>	<i>The second 25%</i>	<i>The third 25%</i>	<i>The highest 25%</i>	<i>The lowest 25%</i>	<i>The second 25%</i>	<i>The third 25%</i>	<i>The highest 25%</i>	<i>The lowest 25%</i>	<i>The second 25%</i>	<i>The third 25%</i>	<i>The highest 25%</i>
Average monthly household expenditure (rounded to the nearest HK\$100)	8,000	14,800	21,300	43,100	6,800	12,300	17,900	38,600	7,200	13,900	20,900	44,500
Median monthly household expenditure (rounded to the nearest HK\$100)	8,500	14,800	20,900	34,800	7,100	12,200	17,700	29,700	7,600	13,900	20,600	34,700

	1999-2000				2004-2005				2009-2010			
	<i>The lowest 25%</i>	<i>The second 25%</i>	<i>The third 25%</i>	<i>The highest 25%</i>	<i>The lowest 25%</i>	<i>The second 25%</i>	<i>The third 25%</i>	<i>The highest 25%</i>	<i>The lowest 25%</i>	<i>The second 25%</i>	<i>The third 25%</i>	<i>The highest 25%</i>
Average monthly household expenditure, if there were no Government's one-off relief measures (rounded to the nearest HK\$100)	Not applicable				Not applicable				7,600	14,200	21,200	44,800
Median monthly household expenditure, if there were no Government's one-off relief measures (rounded to the nearest HK\$100)	Not applicable				Not applicable				8,000	14,200	20,900	35,000

Note:

There were no one-off relief measures during the survey period of 1999-2000 and 2004-2005 rounds of HES.

### Treatment of Neovascular Age-related Macular Degeneration

18. **MR RONNY TONG** (in Chinese): *President, in response to media enquiries, the Hospital Authority (HA) indicated on 16 June this year that the HA would conduct a local clinical trial in collaboration with the University of Hong Kong and The Chinese University of Hong Kong on the use of Avastin and Lucentis in wet Age-Related Macular Degeneration (AMD) patients by the end of this year, in order to gather local evidence and experience for devising a specific treatment protocol in public hospitals. In addition, with additional funding from the Government, the HA reserved a sum of \$12 million in the year 2010-2011 for providing subsidies to wet AMD patients in suitable clinical conditions for their treatment. In this connection, will the Government inform this Council:*

- (a) *whether it knows if the aforesaid funding already reserved in the last financial year has to date been used for subsidizing wet AMD patients to receive treatment; if so, of the number of patients who have received the subsidy; if not, the reasons for that; of the number of patients estimated by the authorities who were not given timely treatment because the funding had remained unused last year;*

- (b) *whether it knows if the HA will use the funding for conducting the aforesaid clinical trial;*
- (c) *whether it knows the purposes of the plan of the HA and the aforesaid two universities to launch the clinical trial on the use of Avastin in the treatment of wet AMD; whether testing the safety of the drug is among such purposes; if so, of the protocols and standards based on which such clinical trial will be conducted; whether such clinical trial will meet the highest safety requirements for drugs approved by drug regulatory authorities of European countries and the United States;*
- (d) *given that the manufacturer of Avastin has not indicated that the drug can be used for the treatment of wet AMD, whether the authorities have assessed if the HA or the Government are liable for compensation to wet AMD patients who suffer from severe side-effects or blindness induced by receiving Avastin treatment, or damages associated with the quality problems of the drug itself; if the assessment outcome is in the affirmative, of the maximum amount of compensation for each patient; of the justifications for the Government to deploy public funds to bear such liability for compensation;*
- (e) *whether it knows, under the current policy, if the HA will solely base on the indications of drugs registered with the Department of Health in considering listing the relevant drugs, including general, special and self-financed drugs, on the HA Drug Formulary (the Formulary); if it will, of the reasons for and purposes of introducing such policy; if not, the reasons and justifications; and*
- (f) *whether it knows if the HA monitors the prescription of drugs for patients in public hospitals to ensure that drugs are used only for their registered indications, and restricts public hospitals from prescribing drugs in treatments which are beyond their registered indications, in order to safeguard the safety of patients; if it does, how these are enforced?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, there are two vascular endothelial growth factor inhibitors commonly used by ophthalmologists worldwide to treat wet AMD, namely Ranibizumab (Lucentis) and Bevacizumab (Avastin)<sup>(1)</sup>. The two drugs are derived from the same monoclonal antibody and hence have similar molecular structure. Ranibizumab (Lucentis) is licensed in Hong Kong in 2007 for the treatment of wet AMD. It is a self-financed drug on the Formulary for wet AMD treatment. Bevacizumab (Avastin) is licensed in Hong Kong in 2005 for the treatment of colorectal cancer. It is a self-financed drug on the Formulary for cancer treatment. Although Bevacizumab (Avastin) is not licensed for the treatment of wet AMD, prescription of the drug beyond its licensed indication (or off-label use) for treating wet AMD is a common worldwide practice.

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

(a) to (d)

The HA was granted an additional funding of \$12 million in 2010-2011 to launch a special programme for wet AMD patients under suitable clinical conditions to receive subsidies to use the above two drugs for treatment. The special programme consists of two parts, namely, a clinical study and a special project. The clinical study will be conducted jointly with the two universities to compare the treatment options as well as the efficacy and cost-effectiveness of the two drugs, so as to accumulate more clinical data and local experience in the use of the drugs. Meanwhile, under the special programme, wet AMD patients under suitable clinical conditions will be subsidized to use Ranibizumab (Lucentis).

The Administration reported to the Legislative Council Panel on Health Services the above special programme on 11 May 2010. As the clinical study has to go through established and stringent approval procedures, and there is a need for negotiations with the drug companies on the detailed arrangements for the special project, the special programme is still under processing and scheduled for

(1) The drug company concerned has changed the Chinese name of the drug from "貝伐珠單抗(癌思停)" to "貝伐珠單抗(安維汀)".

implementation in 2011-2012. The HA has made arrangements for the additional funding that has not been used in 2010-2011 to be carried forward to 2011-2012 for implementation of the programme.

The HA has been adopting evidence-based medical practices and, with patient safety as its primary consideration, providing patients with treatments proven to be safe, efficacious and appropriate. The clinical study to be conducted by the HA and the two universities must be approved by an independent Ethics Committee before implementation to ensure its safety and feasibility. A clinical study is a medical procedure conducted with patients' knowledge and informed consent. It has to be conducted by registered healthcare professionals. The scope of an ethical review mainly covers the theoretical basis of the clinical study, patient safety and information pertinent to the "Participant's Consent Form". The entire design of a clinical study must be target-oriented and it is necessary to ensure that the risks borne by the participants are kept to the minimum within the known extent of the risks. The design of the clinical study must also comply with HA's guidelines and requirements on patient safety and participants need to be provided with appropriate medical support throughout the study. Besides, a mechanism for notification of serious incidents should be set up for the clinical study.

Institutions and researchers conducting a clinical study must explain the key aspects of the study to participants in detail and obtain their informed and voluntary consent in writing. Participants have a full right to decide and make their own choice as to whether or not to participate in the clinical study. They can also withdraw from the clinical study during the study period. The HA is discussing with its insurance consultant the insurance arrangements for the clinical study.

(e) and (f)

The Formulary is developed with evaluation of new drugs and review of the prevailing list of drugs by relevant experts on a regular basis. The review process is based on scientific and clinical



evidence on the safety, efficacy and cost-effectiveness of the drugs, taking into account different factors, including patients' actual experience in the use of the drugs and the views of patient groups, and so on. Under the prevailing mechanism for the Formulary, the HA will neither evaluate any unregistered new drugs nor incorporate such drugs into the Formulary. All the existing drugs on the Formulary have been registered with the Department of Health.

Most off-label use of drugs is to meet clinical needs for treatment purposes. There is usually extensive medical literature to support off-label use of drugs. However, it is purely a commercial decision for the drug traders to decide whether to register individual drugs or indications, and to choose between places of registration. As in most advanced countries and regions, doctors in Hong Kong may prescribe drugs for off-label use based on their clinical expertise and judgment and professional ethics, having regard to the clinical conditions of individual patients. As a general principle of the HA, doctors should ensure that the drugs prescribed (including drugs prescribed for off-label use) are clinically safe and appropriate for the patients. The HA also has an established mechanism to report and review the suspected adverse drug reactions of patients so as to safeguard patient safety.

### **Management of Public Records**

19. **MS MIRIAM LAU:** *President, with a view to improving the administrative arrangements for management of public records, the Government introduced a set of mandatory records management requirements (the requirements) in April 2009 for compliance by Policy Bureaux and government departments (B/Ds). However, criticisms from the public remain that this is insufficient to ensure that government records are properly managed and disposed of. There are still calls from the community for introduction of an archival law or public records law in Hong Kong. In this connection, will the Government inform this Council:*

- (a) *whether the Government Records Service (GRS) has carried out records audits to ensure compliance with the requirements; if it has,*

*of the details of such audits conducted in the past two years; if not, the reasons for that;*

- (b) whether the GRS can make it mandatory for B/Ds to make all their records available for appraisal and transfer to the archives; if not, what mechanism is at present in place to ensure that B/Ds do not withhold their records from the GRS; whether B/Ds are required to maintain and comply with a record disposal schedule;*
- (c) whether the present public records management system requires the submission of policy records to the GRS from the following public offices: Office of the Chief Executive, Chief Secretary for Administration's Office, Financial Secretary's Office, the Central Policy Unit, Invest Hong Kong, the Hong Kong Monetary Authority and the Independent Commission Against Corruption (ICAC); if not, of the reasons for that;*
- (d) in view of the relocation of the offices at the Central Government Offices (CGO) to Tamar in September this year, what measures will be taken to ensure that government records will not be misplaced or disposed of improperly during the removal process; whether an inventory of all the record series will be taken to identify which records will be moved, as well as which records will be otherwise dealt with, and so on;*
- (e) in respect of the records kept by B/Ds, of the percentages of those in electronic form, and those in paper format; what mechanism is in place to ensure that these electronic records will not be manipulated or deleted improperly; and*
- (f) given that there is an absence of an archival law or public records law to underpin the present public records management system, can the Government give an undertaking that no government record will be destroyed until proper appraisal has been conducted by the GRS or other qualified archivists?*

**CHIEF SECRETARY FOR ADMINISTRATION:** President,

- (a) As one of the requirements promulgated in April 2009, B/Ds are required to review their records management practices regularly so as to assess their compliance with such requirements and to identify and implement improvements. To assist B/Ds in this task, the GRS has formulated a review form and initiated the first review in the second half of 2010 which has yet to be completed.

(b) and (c)

To ensure systematic planning and orderly implementation of records disposal after records have been kept for the appropriate duration, B/Ds are required to adopt records disposal schedules developed by the GRS to dispose of their administrative records. For programme records, B/Ds are required to develop, in consultation with the GRS, disposal schedules which stipulate the length of time that records should be retained and the ways of disposal including transfer of records having archival value to the GRS for permanent preservation. As a rule, the GRS will conduct records appraisal and identify records having archival value at the time when disposal schedules are established or at the end of their retention period. To strengthen the arrangements in this regard, the requirements require that B/Ds should transfer their records having archival value to the GRS according to the respective disposal schedules and should dispose of their time-expired records at least once every two years. As an additional safeguard, B/Ds must obtain the prior agreement of the GRS Director before they destroy any government records. This and the aforesaid arrangements will ensure that records are appraised and those having historical value are identified and transferred to the GRS.

Same as other B/Ds, the present public records management system, notably the arrangements for records disposal and identification by the GRS and transfer to the GRS of government records with historical value, also applies to the Chief Executive's Office, Chief Secretary for Administration's Office, Financial Secretary's Office, the Central Policy Unit, Invest Hong Kong and the Hong Kong

Monetary Authority. In the case of ICAC, the department has established its own guidelines (including records retention and approval authority for records destruction) on managing its records based on the Government's records management policy. Such guidelines comply with the relevant legislation (including Independent Commission Against Corruption Ordinance (Cap. 204), Interception of Communications and Surveillance Ordinance (Cap. 589) and Personal Data (Privacy) Ordinance (Cap. 486)).

- (d) As with other relocation exercises, bureaux and offices (B/Os) which will move to the new CGO at Tamar are required to put in place appropriate arrangements to ensure the safe custody of records and to safeguard against loss of records during relocation of their records to the new CGO. To assist the B/Os concerned in this task, the GRS briefed the relevant B/Os in April 2010 on issues such as the requirements. Guidelines on bulk relocation of government records have also been issued to the concerned B/Os in 2011 providing detailed advice on the procedures they should adopt for the relocation exercise. Specifically, B/Os have been reminded to update their record inventory prior to the relocation, ensure that their records are properly handled and under safe custody before, during and after the relocation, and seek the GRS Director's prior agreement before they destroy any records. The GRS will continue to give advice to the B/Os concerned as necessary in this regard.
- (e) We do not maintain statistics on the percentage of government records kept in electronic and paper forms in B/Ds.

In May 2011, the Office of the Government Chief Information Officer promulgated the government electronic information management (EIM) strategy and EIM Framework for B/Ds to develop their EIM strategies, including the adoption of an electronic recordkeeping system (ERKS) as a mandatory component. In this connection, action is being taken to provide appropriate support to B/Ds to help them develop their organizational EIM strategies.

Pending the full implementation of ERKS in the Government, B/Ds are required to convert email records into printed form for

management and storage and put in place appropriate arrangements to ensure proper custody and storage of these printed email records in the same way applicable to paper records. As mentioned above, B/Ds are required to obtain the GRS Director's prior agreement for destruction of records irrespective of formats.

- (f) As an ongoing effort, the Government reviews and improves on the arrangements for records management from time to time. We introduced in April 2009 a set of the requirements for compliance by all B/Ds through the issue of a General Circular. These requirements cover the key records management functions including proper management of email records, records classification, records disposal (including establishment of disposal schedules and transfer of records having archival value to the GRS), proper custody and storage of records, and protection of vital records. Coupled with the requirement for B/Ds to seek the GRS Director's prior agreement before they destroy any records, the present public records management system should ensure that no government record will be destroyed until proper appraisal by the GRS. The requirements apply to all government servants and disciplinary proceedings may be taken against a government servant if he disobeys, neglects or fails to observe the requirements.

### **Support for Promotion of Moral and National Education**

20. **MR JAMES TO** (in Chinese): *President, the Education Bureau has planned to make "moral and national education" an independent subject and fully implement it in secondary and primary schools in Hong Kong in the 2013-2014 school year; and as early as in 2001, moral and civic education had already been identified as one of the four key tasks in the curriculum reform. In addition, the National Education Centre (NEC) and the National Education Services Centre, which have been established with the support from the Education Bureau and the Home Affairs Bureau, provide support on national education each year for students and teachers in Hong Kong. Different academic groups have expressed concerns over the effectiveness the national education implemented so far. The results of the annual surveys on national identity conducted by NEC have revealed that the sense of national identity amongst students has been*

*strengthened in recent years, but it has only been improving slowly in the last two years. On the other hand, the officer-in-charge of NEC has pointed out that each year NEC is offering 500 student exchange places on the Mainland, but the quotas are often not sufficient to meet the demand, reflecting that there is a keen demand from students for national education. In this connection, will the Government inform this Council:*

- (a) of the resources injected by the Education Bureau into the area of national education in each of the past five years, the types of national education activities covered, and the allocation of resources to such activities;*
- (b) whether the Education Bureau will conduct regular assessments and reviews on the effectiveness of the various national education activities funded by it (such as exchange trips and national study programmes, and so on) in strengthening the sense of national identity amongst students; if it will, of the evaluation criteria;*
- (c) of the statistics (including the number of activities organized, the amount of resources injected and the number of participating students, and so on) on the various national education activities funded by the Education Bureau (such as exchange trips and national study programmes, and so on) in the past five years;*
- (d) of the total amount of subsidies from the Education Bureau for schools to organize exchange trips to the Mainland in each of the past five years; and*
- (e) whether the various funds (such as the Civic Education Fund or the Community Investment and Inclusion Fund) set up by the Government have funded programmes relevant to national education in the past five years; if so, of the respective amounts of funds for various programmes?*

**SECRETARY FOR EDUCATION** (in Chinese): President, the Moral and National Education Ad Hoc Committee under the Curriculum Development Council proposed the development of a Moral and National Education

Curriculum, and launched a four-month consultation exercise on the proposed curriculum in May 2011. Schools in Hong Kong always attach great importance to moral and civic education, and seek to cultivate students' positive values and attitudes (for example, respect for others, responsibility, national identity, commitment) through teaching in various key learning areas and subjects, as well as a wide range of learning experiences. Regarding national identity, Hong Kong students generally agree that they possess multiple identities. While they love Hong Kong and the Motherland, they also have global vision. Nearly 75% of them consider that they have the responsibility to contribute to the development of the country. This shows the results of schools' efforts in fostering students' national identity.

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

- (a) The Education Bureau promotes national education through various activities, which include running professional development programmes for teachers, developing learning and teaching resources, and organizing cross-boundary exchange/learning activities for students and teachers. In the past five years, the Education Bureau's expenditure on national education for primary and secondary schools increased from \$35.3 million in 2007-2008 to an estimate of \$95.7 million in 2011-2012, including some \$7.6 million for teachers' professional development, \$30.1 million for developing learning and teaching resources, and \$58 million for organizing cross-boundary exchange/learning activities for students and teachers.
- (b) National education activities aim to help students gain a comprehensive understanding of the Motherland from different perspectives and provide students with holistic learning experiences. For example, the objective of learning and exchange activities in the Mainland is to provide opportunities for students to understand the national situation through first-hand experience in four dimensions, namely, natural resources, humanities, history and contemporary development. Participating schools will usually conduct reflection and sharing sessions during and after the activities. Some will also organize project learning to enable students to share experience, reflect on and consolidate what they have learnt. Schools are

required to submit reports to the Education Bureau within one month after the activities, setting out the learning requirements and performance of students, what have been gained by students, and ways to extend and promote the outcomes and experiences of these activities within and outside the schools. The Education Bureau will study the information, which can provide reference for reviewing the activities and for planning more systematically Mainland exchange activities that are better integrated with the school curriculum. These activities have positive effects on students' national identity.

(c) and (d)

The Education Bureau's expenditure on Mainland exchange activities, including subsidies for primary and secondary schools organizing such activities, increased from \$12 million in 2008-2009 to \$58 million (estimate) in 2011-2012, with the number of participating students expected to increase from 10 340 to 42 700 over the same period.

- (e) According to information provided by the Home Affairs Bureau, there is no specific fund established under the Committee on the Promotion of Civic Education (CPCE) to sponsor national education activities. Despite that, the CPCE sponsors projects on national education through different channels. In the past five years, the amount of funds for these projects increased from \$500,000 in 2007-2008 to an estimate of \$4.97 million in 2011-2012.

As regards the Community Investment and Inclusion Fund, its purpose is not to provide funding for national education programmes. According to our record, it has not funded any such programme.

The assistance programmes to be launched by the Community Care Fund in 2011-2012 include setting up a school-based fund for a period of three years to subsidize primary and secondary students from low-income families participating in cross-boundary learning activities organized by schools so as to enhance their knowledge,



expand their horizons and enrich their learning experiences. Cross-boundary learning activities covered by the school-based fund include those held in the Mainland. Such activities can enhance students' understanding of the Motherland, and strengthen their national identity. The Community Care Fund has reserved \$164.4 million for the operation of the school-based fund in 2011-2012.

## **BILLS**

### **First Reading of Bills**

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

#### **PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2011**

#### **IMMIGRATION (AMENDMENT) BILL 2011**

#### **PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 2011**

#### **ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 2011**

**CLERK** (in Cantonese): Personal Data (Privacy) (Amendment) Bill 2011

Immigration (Amendment) Bill 2011

Protection of Wages on Insolvency (Amendment) Bill  
2011

Road Traffic (Amendment) (No.2) Bill 2011

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

**Second Reading of Bills**

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

**PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2011**

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I move the Second Reading of the Personal Data (Privacy) (Amendment) Bill 2011 (the Bill).

The Bill seeks to implement the proposals in the "Report on Further Public Discussions on Review of the Personal Data (Privacy) Ordinance" (further public discussions report) released in April 2011.

The Personal Data (Privacy) Ordinance (PDPO) has been in force since 1996. Having regard to developments over the last decade or so, the Government has reviewed the PDPO with the support of the Privacy Commissioner for Personal Data (Privacy Commissioner), and proposed a number of measures to strengthen the protection of personal data privacy, and enhance the effectiveness and improve the operation of the PDPO. Moreover, in recent years, cases of transfer of customer personal data by some enterprises to others for direct marketing purposes without explicitly and specifically informing the customers of the purpose of the transfer and the identity of the transferees and seeking the customer's consent, some of which involved monetary gains, have aroused widespread community concerns. To address these concerns, we have proposed various amendments to the PDPO.

In the following, I will highlight some key proposals in the Bill.

First, on direct marketing, to provide data subjects with an informed choice as to whether to allow the use of their personal data in direct marketing, the Bill requires a data user who intends to use personal data in direct marketing or provide personal data to other persons for use in direct marketing to provide the data subject with written information on the kinds of personal data to be used or provided, the classes of persons to which the data is to be provided, and the

classes of goods, facilities or services to be offered or advertised or the purposes for which donations or contributions may be solicited.

The Bill also requires the data user to provide the data subject with a response facility through which the data subject may, without charge from the data user, indicate in writing to the data user whether the data subject objects to the intended use or provision. The written information and the response facility provided by the data user must be presented in a manner that is easily readable and easily understandable.

The above arrangement strikes a balance between the protection of personal data privacy and allowing room for businesses to operate while providing data subjects with an informed choice as to whether to allow the use of their personal data in direct marketing.

If, after the provision of the information and response facility required, the data subject sends a reply to the data user indicating that he does not object, the data user may proceed to use or provide the data for use in direct marketing. If no reply indicating objection is sent within 30 days after the information and response facility are presented to the data subject or after the data is collected, the data subject will be taken not to object.

A data user who uses personal data in direct marketing or provides personal data to other persons for use in direct marketing without complying with the requirements or against the wish of the data subject will be liable, on conviction, to a fine of \$500,000 and imprisonment for three years.

The Bill further provides that, irrespective of whether a data subject has, within the 30-day response period, sent any written reply to the data user indicating no objection, the data subject may subsequently, at any time, object in writing to the use or provision of his personal data and the data user will then have to cease to use or provide the data subject's personal data for use in direct marketing. The data subject may also require the data user to notify the persons to whom his personal data has been provided for use in direct marketing to cease to so use the data. Upon receipt of the notification, the persons to whom the personal data has been provided have to cease to so use the data. It will be an offence for the data user or the person to whom the data has been provided not to

comply with the data subject's above requests. The penalty will be a fine of \$500,000 and imprisonment for three years. This will further enhance protection to data subjects.

Regarding sale of personal data, the Bill also introduces specific requirements. A data user who intends to sell personal data must, before the sale, provide the data subject with written information on the kinds of personal data to be sold and the classes of persons to which the data is to be sold. The data user is also required to provide the data subject with a response facility through which the data subject may, without charge from the data user, indicate whether he objects to the intended sale. The abovementioned written information and response facility must be presented in a manner that is easily readable and easily understandable. As with the requirement on providing personal data to other persons for use in direct marketing, if no reply indicating objection to the sale is sent within the 30-day response period, the data subject will be taken not to object.

A data user who sells personal data without complying with the requirements or against the wish of the data subject will be liable, on conviction, to a fine of \$1 million and imprisonment for five years.

The Bill also provides that, irrespective of whether a data subject has, within the 30-day response period, sent any written reply to the data user indicating no objection, the data subject may subsequently, at any time, object in writing to the sale of his personal data and the data user will then have to cease to sell the data subject's personal data. Furthermore, the data subject may also require the data user to notify the persons to whom his personal data has been sold to cease using the data. Upon receipt of the notification, the buyers have to cease using the data. It will be an offence for the data user or buyer not to comply with the data subject's above requests. The penalty will be a fine of \$1 million and imprisonment for five years.

It will also be an offence for a person who obtains personal data from a data user without the data user's consent, and subsequently discloses the personal data with an intent to obtain gain in money or other property, whether for the benefit of the person or another person; with an intent to cause loss in money or other property to the data subject; or causing psychological harm to the data subject. The penalty will be a fine of \$1 million and imprisonment for five years.

In addition, the Bill also includes various amendment proposals, including empowering the Privacy Commissioner to provide legal assistance to data subjects who intend to bring proceedings under the PDPO to seek compensation from data users; imposing a heavier penalty for repeated contravention of enforcement notices; creating a new offence for intentional and repeated contravention of the requirements under the PDPO for which enforcement notices have been served; introducing new exemptions in respect of certain requirements under the PDPO; and making new provisions relating to data protection principles. The Bill also makes technical amendments to improve the operation and presentation of the PDPO.

The Government has drawn up the proposals in the Bill after considering the views received during the public consultation on the review of the PDPO from August to November 2009 and the further public discussions from October to December 2010. During this time, we briefed the Legislative Council Panel on Constitutional Affairs on our proposals a number of times and sought Members' views. On 18 April 2011, the Panel also discussed the legislative proposals in the further public discussions report.

After the First and Second Readings of the Bill in the Legislative Council today, we will explain our proposals in detail at the meetings of the Bills Committee and listen to the views of Members, interested organizations and the public. I hope that the Bill will receive the support of Members and that it will be passed as soon as possible.

President, I so submit.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Personal Data (Privacy) (Amendment) Bill 2011 be read the Second time.

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

## **IMMIGRATION (AMENDMENT) BILL 2011**

**SECRETARY FOR SECURITY** (in Cantonese): President, I move the Second Reading of the Immigration (Amendment) Bill 2011 (the Bill).

The Bill seeks to provide for the statutory screening mechanism for torture claims under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Article 3(1) of the CAT requires State parties not to expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture (torture risk). The CAT has applied to Hong Kong since 1992. During the 12 years from 1992 to 2004, the Government has received a total of 53 claims. In 2004, the Court of Final Appeal ruled on a judicial review of a torture claim that the principle of high standards of fairness should be attained during a torture claim screening processing. Since then, the number of torture claims has surged. While 200 claims were received in 2005 alone, the Immigration Department (ImmD) received more than 2 000 claims in 2008.

In December 2008, pursuant to the court ruling in another judicial review, the ImmD suspended the screening of torture claims and started to improve the screening mechanism. The enhanced screening mechanism was relaunched in December 2009. The enhancements include the provision of publicly-funded legal assistance to claimants, better training for personnel dealing with claims, and a decision-making procedure involving adjudicators with legal background in handling appeal cases. The Government made an undertaking that legislation will be formally enacted to establish a legal basis for the screening mechanism once adequate experience has been gained in the enhanced mechanism to ensure its applicability.

In the past two years from 2009 to 2010, the total number of new claims exceeded 5 000. This year, the ImmD has received around 100 new claims monthly on average. At present, the total number of claims is more than 6 700. As indicated by the increasing number of cases, the Government should continue to ensure that each claim is handled in a fair and cautious manner through the legislative process on the one hand, while it is necessary to enact statutory provisions to prevent abuse of the screening mechanism on the other.

Here, I would like to briefly explain some key points of the Bill.

First of all, the Bill provides the scope of claims which refers to acts of torture under the CAT. A claimant under the screening mechanism will not be

removed to the allegedly torture-risk State during the screening process. If the torture claimants are illegal immigrants or overstayers, the Director of Immigration has the power to detain the claimants during the screening processing, or the claimants may be released on recognizance subject to certain conditions. However, the Bill provides that any person only by virtue of being a torture claimant will not be treated as ordinarily resident in Hong Kong.

In addition, the Bill also provides for the procedures of lodging and processing claims as well as the claimants' responsibility. The ImmD will decide whether a claim is substantiated on the basis of the grounds and evidence submitted by the claimant. If the claimant feels aggrieved by the decision, he may lodge an appeal. The Chief Executive will appoint an Appeals Board comprising members with legal background to decide on the appeal cases. In order to avoid unreasonable delay of the screening processing, the Bill provides for some important deadlines, including that the claimants are required to return a torture claim form, together with grounds and evidence, within a period of 28 days from the day their claims have been received and processed by the ImmD. If a claimant feels aggrieved by the ImmD's decision, the claimant may appeal within 14 days after the notice of the decision is given. A claim is treated as withdrawn on the claimant's failure to return his torture claim form within the prescribed time frame unless sufficient evidence is provided. Applications for appeal submitted beyond the deadline will not be entertained by the Appeals Board. Furthermore, considerations or restrictions in relation to whether a withdrawn claim can be reopened and whether a subsequent claim can be made after a final decision has been made are set out in the Bill.

The Bill also provides that acts of making false statements or misrepresentation or use of forged documents during the torture claim screening processing will constitute an offence. Any behaviour of the claimant, including those designed to delay the handling of their claims without substantial grounds, may be considered damaging to their credibility.

President, we have made an undertaking to the Legislative Council that a statutory mechanism will be introduced after we have gained sufficient experience under the enhanced screening mechanism. The enhanced screening mechanism has operated for more than 18 months and over 1 300 claims have been handled. Publicly-funded legal assistance has also been provided to needy claimants through the Duty Lawyers Service and around 560 claims have been

decided by the ImmD. The Legislative Council Panel on Security was consulted on the legislation on the screening mechanism on 12 April and 5 July and members generally supported legislation on the torture claim screening system by the Government.

The SAR Government will honour its obligations under the CAT and provide protection to claimants whose claims have been substantiated from repatriation. Meanwhile, we will, on humanitarian grounds, offer basic necessities such as housing, food and medical service to needy torture claimants during their presence in Hong Kong while waiting for the outcome of screening processing.

We are confident that once the Bill has been passed, it will help curb the abuse of the torture claim mechanism. Through the Bill, we can further forge social consensus and establish a legal framework which can meet high standards of fairness and handle the screening of torture claims in an effective manner.

With these remarks, President, I hope Members will support the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Immigration (Amendment) Bill 2011 be read the Second time.

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

## **PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 2011**

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I move the Second Reading of the Protection of Wages on Insolvency (Amendment) Bill 2011 (the Bill).

The Bill seeks to amend the Protection of Wages on Insolvency Ordinance to expand the scope of the Protection of Wages on Insolvency Fund (the Fund) to cover pay for untaken annual leave and untaken statutory holidays under the Employment Ordinance (EO).



The Fund was set up mainly to provide timely relief in the form of ex gratia payment to employees of insolvent employers in the event of business closures. It is mainly financed by an annual levy on each business registration certificate. With improvements over the years, the protection offered by the Fund has increased from its initial coverage of only \$8,000 in arrears of wages to the current maximum payment of \$278,500 to each employee, comprising four months' wages up to \$36,000, one month's wages in lieu of notice up to \$22,500, and severance payment up to \$50,000 plus 50% of the remainder of the entitlement.

The Bill proposes to further extend the protection of the Fund to cover two areas: (a) pay for annual leave under the EO not yet taken by an employee, not exceeding his full statutory entitlement for the last leave year (ranging from seven to 14 days' pay depending on the employee's length of employment); and (b) pay for statutory holidays under the EO not yet taken by an employee within four months before his last day of service. Neither the amount of pay for untaken annual leave nor the amount of pay for untaken statutory holidays, nor the total amount of the two, may exceed \$10,500.

Upon business cessation, if insolvent employers are unable to pay wages and termination payments, very often the employees are also owed pay for untaken annual leave upon termination. Some employers may also fail to grant timely statutory holidays in accordance with the EO. Therefore, we propose to expand the scope of the Fund to cover pay for untaken annual leave and untaken statutory holidays so as to strengthen the protection of affected employees in this regard.

The proposal has taken into account the long-standing and fundamental principles in improving the Fund's coverage in a progressive manner and the relevant requirements under the EO so as to ensure the Fund's sustainability and prevent employers from defaulting on payments of statutory entitlements to their employees on a prolonged basis and shifting their liability to the Fund upon business cessation.

The Bill has already taken into account the views of the Legislative Council Panel on Manpower (the Panel) in 2009, expanding the coverage from only pay for untaken annual leave to pay for untaken statutory holidays as well.

The proposal was endorsed by the Fund Board and gained the support of the Labour Advisory Board and the Panel in 2010.

President, the legislative amendments proposed by the Administration mark an important step in enhancing employee protection. They have taken into consideration the interests of both employers and employees whilst safeguarding the effective operation of the Fund. I hope that Members will support the Bill so that it can be passed as early as possible for the benefit of employees.

President, I so submit.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Protection of Wages on Insolvency (Amendment) Bill 2011 be read the Second time.

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

## **ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 2011**

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I move the Second Reading of the Road Traffic (Amendment) (No. 2) Bill.

Public light buses (PLBs), which carry on average some 1.8 million passengers daily, are one of the popular modes of public transport. The safe operation of PLBs has all along been a subject of enormous public concern. The accident and casualty rates of PLBs in recent years were relatively higher than those of other classes of motor vehicles. The Bill seeks to provide the necessary legal provisions for the introduction of a series of measures to enhance the safe operation and service quality of PLBs. These measures are mainly as follows.

Firstly, we propose to impose a maximum speed limit on PLBs on road. We propose to set a maximum speed of 80 km an hour for PLBs having regard to the current operational situation of PLBs and the need to maintain the competitiveness as well as the operational efficiency of PLB services. I must stress that despite the imposition of the maximum speed limit at 80 km an hour,

PLB drivers are still subject to any speed limit indicated on the traffic signs which may be lower than 80 km an hour on the road sections concerned.

Secondly, we propose that an approved speed limiter shall be installed on a PLB to prevent drivers from driving above a set speed. In fact, the Transport Department (TD) has already, through new licensing conditions since June 2010, required the installation of a speed limiter of a set speed at 80 km an hour on all PLBs. However, such an administrative measure has its limitation because offenders will not face any criminal sanctions. Apart from the provision which mandates a speed limiter as a standard requirement for all PLBs, we propose to make any violation of the relevant stipulation, such as interfering with the proper operation of a speed limiter, an offence.

Thirdly, we propose to include an Electronic Data Recording Device (EDRD) as the basic equipment of new PLBs. The EDRD helps operators manage their fleet of vehicles and deter improper driving behaviour of PLB drivers. Depending on the outcome and cost-effectiveness of installing the device on newly registered PLBs, further consideration may, in due course, be given to requiring the retrofitting of an EDRD to existing PLBs, subject to technical feasibility and availability of suitable and reliable EDRD models for retrofitting. We further propose to make contravention of the requirements in relation to EDRD (such as using a PLB without an EDRD or with an EDRD which is not maintained in good working order) an offence. Furthermore, we propose to empower the TD and the police to retrieve any data stored in an EDRD and to provide for the use of that data as evidence in any criminal proceedings.

Fourthly, we propose to require all applicants for a PLB driving licence who have passed the relevant driving test to attend and complete a mandatory pre-service course which is specified and endorsed by the Commissioner for Transport before they are issued with a PLB driving licence. The pre-service course content will include safe driving behaviour and skills for good customer services. To allow time for selection and designation of pre-service training schools to provide the pre-service course, it is expected that the new requirement may come into effect about six to nine months after enactment of the legislation.

Fifthly, we propose to impose a mandatory requirement for the display of a PLB driver identity plate to the effect that any PLB driver who contravenes the requirements while a PLB is in service will commit an offence. We hope that

PLB drivers' driving attitude and service quality can be further improved through the aforesaid measures.

President, we have consulted the Transport Panel of the Legislative Council on the proposals mentioned just now which are generally supported by Members. We have also consulted the owners and holders of passenger service licences for PLBs, the operators and trade associations of the PLB trade. The PLB trade generally supports the continuous improvement of PLB safety. Overall, we consider that the proposals will effectively enhance PLB safety and service quality and respond to the public calls for further enhancement of the safe operation of PLB.

I hope Members will support the Bill introduced today so that the proposals can be implemented expeditiously.

Thank you, President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Amendment) (No. 2) Bill 2011 be read the Second time.

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

## **MEMBERS' BILLS**

### **First Reading of Members' Bills**

**PRESIDENT** (in Cantonese): Members' Bill: First Reading.

## **THE HONG KONG POLYTECHNIC UNIVERSITY (AMENDMENT) BILL 2011**

**CLERK** (in Cantonese): The Hong Kong Polytechnic University (Amendment) Bill 2011.

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

**PRESIDENT** (in Cantonese): As the Hong Kong Polytechnic University (Amendment) Bill 2011 introduced by Dr LAM Tai-fai relates to government policies, in accordance with Rule 54(1) of the Rules of Procedure, I shall call for the signification of the written consent of the Chief Executive by a designated public officer before the Council enters upon consideration of the Second Reading of the Bill.

**SECRETARY FOR EDUCATION** (in Cantonese): President, I confirm that written consent of the Chief Executive has been given in respect of the introduction of the Hong Kong Polytechnic University (Amendment) Bill 2011 to the Legislative Council.

### **Second Reading of Members' Bills**

**PRESIDENT** (in Cantonese): Member's Bill: Second Reading.

Dr LAM Tai-fai, you may now move the Second Reading of the Bill introduced by you.

### **THE HONG KONG POLYTECHNIC UNIVERSITY (AMENDMENT) BILL 2011**

**DR LAM TAI-FAI** (in Cantonese): President, I move the Second Reading of the Hong Kong Polytechnic University (Amendment) Bill 2011 (the Bill). The Bill, which was published in the Government Gazette on 8 July 2011, seeks to amend the Hong Kong Polytechnic University Ordinance (the PolyU Ordinance). The amendments proposed in the Bill are mainly related to three areas.

The first proposed amendment is related to the number of members of the Council and the composition of the Council. The Report on Higher Education in Hong Kong published in 2002 recommended that university councils should be small in size for more effective governance. The Hong Kong Polytechnic University (PolyU), after considering the recommendation, has proposed that the number of members of the Council be reduced from 29 to 25. A comprehensive review has also been conducted in respect of the composition of the Council. First of all, regarding staff representatives, lower-ranking non-academic staff

members are not eligible to be members of the Council under the current PolyU Ordinance. Considering that such a restriction is undesirable, the PolyU has proposed an amendment to the effect that all full-time staff will be eligible to be members of the Council.

In order to enhance the representation of students in the Council, the PolyU has proposed to increase the number of student representatives from one to two, of whom one shall be elected by and from the full-time undergraduate and sub-degree students and one of whom shall be elected by and from the full-time postgraduate students. Insofar as lay members are concerned, currently there are 20 members appointed by the Chief Executive. The PolyU has proposed that lay members be reduced to 17, of whom nine shall be appointed by the Chief Executive and eight shall be appointed by the Council. Furthermore, as the President and Deputy President are ex-officio members of the Council, the management has proposed to delete the "faculty deans" category on the ground that representation is sufficient.

President, the second major proposal is related to the voting rights of Council members who are employees and students. Under the current PolyU Ordinance, Council members who are employees and students have no voting rights with regard to the appointment and removal of the President and the Deputy President. Considering that employees and students are important stakeholders, the PolyU has proposed to delete the relevant restriction.

Under the third major proposal, changes will be introduced to section 9(3)(c) and other relevant sections of the PolyU Ordinance. Section 9(3)(c) of the PolyU Ordinance states that the Council shall not delegate to any committee or any person the power to approve terms and conditions of service of persons in the employment of the University. The PolyU considers that this stipulation may easily lead to misinterpretation that the Council must approve the remuneration and the terms and conditions of service of every person in the full-time employment of the University. Hence, an amendment to section 9(3)(c) and other relevant sections is proposed so as to clearly define the role of the Council as the body to set the policy governing the terms and conditions of service of staff members.

President, the aforementioned changes are made by the PolyU after careful consideration of the recommendations of the Report on Higher Education in

Hong Kong published in 2002 and the Report No. 40A of the Public Accounts Committee in 2003. In response to the recommendations of these two reports, the PolyU invited two overseas individuals and two local individuals outside the university, who had rich experience in governance, to form a committee to conduct a comprehensive Governance and Management Review for the University in 2004. Apart from considering the recommendations of the two reports, the committee has also invited views from various stakeholders of the University. Subsequently, the Council has held long and in-depth discussions before deciding the contents of the proposed amendments.

The Bill was presented to the Panel on Education for discussion at the Panel's meeting on 9 November 2009. On the advice of the Panel, the PolyU Staff Association has consulted all full-time employees on the election method of staff representatives. According to the wish of the majority of staff members, the PolyU Council has revised the original proposal to the effect that two staff representatives will be elected from among all full-time staff instead of the proposed provision of separate seats each for academic and non-academic staff. The Panel has been informed of the relevant amendment. All amendments in the Bill are proposed after in-depth discussions. It is believed that both the transparency and effectiveness of governance can be enhanced through wider participation of various stakeholders.

President, as a Council member of the PolyU, I introduce the Bill to Members on behalf of the PolyU and urge Members to support the proposals. Thank you.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Hong Kong Polytechnic University (Amendment) Bill 2011 be read the Second time.

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

### **Resumption of Second Reading Debate on Members' Bills**

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the University of Hong Kong (Amendment) Bill 2010.

**UNIVERSITY OF HONG KONG (AMENDMENT) BILL 2010****Resumption of debate on Second Reading which was moved on 24 November 2010**

**PRESIDENT** (in Cantonese): Ms Cyd HO, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

**MS CYD HO** (in Cantonese): President, in my capacity as Chairman of the Bills Committee on University of Hong Kong (Amendment) Bill 2010 (the Bills Committee), I report to the Legislative Council the deliberations of the Bill Committee.

The University of Hong Kong (Amendment) Bill 2010 (the Bill) mainly seeks to rectify the inconsistency between the roles of the Court and the Council of the University of Hong Kong (HKU) as described in the existing Ordinance and those in practice, and to replace the old academic titles with new academic titles.

The Bills Committee has noted that under the existing Ordinance, the Court shall be the governing body of the HKU but in practice, the Court mainly functions as an advisory body. Conversely, the powers of the Council are manifold, which include managing the finance of the HKU, prescribing the duties of employees of the HKU, and so on. Members generally support the proposal in the Bill for rectification of the inconsistent descriptions of the roles of the Court and the Council with regard to their powers by providing that the Court is the supreme advisory body of the HKU, whereas the Council is the supreme governing body of the HKU.

As regards the proposed adoption of the new academic titles, members have noted that as part of its human resources reforms and following the global trend, these new academic titles have been used by the HKU since 2004. The staff of the HKU have been consulted and supported the adoption of the new academic titles. Members have stressed the importance of ensuring that the proposed amendments concerning academic titles would not affect the existing rights and protection enjoyed by staff members who decide to retain their old academic titles.



In response to members' concern, Dr David LI will propose an amendment to clause 5(2) of the Bill to provide expressly that staff members holding the old academic titles are permitted to retain the status of Teacher, in order to more clearly provide reassurance to these staff members.

Members have noted that when the HKU conducted its Human Resource Management reform in 2004, it was recommended that academic-related staff (such as Teaching Consultants and Language Instructors) who are contributing to the teaching of classes be accorded the new title of Lecturer. Some members have expressed support for the request of academic staff associations for giving the status of Teacher, including good cause protection, to academic-related staff who will be accorded the new title of Lecturer.

The HKU has explained to members that the proposed creation of the new title of Lecturer for academic-related staff is intended to streamline the staff titles currently in use. Although the HKU has no intention to extend the application of good cause protection to these academic-related staff, the Council will consider extending to them various rights that are currently enjoyed by Teachers, such as membership of Faculty Board and Board of Examiners, and so on. The relevant academic staff associations have expressed support for this arrangement.

The Bills Committee has also discussed matters relating to representation of Members of the Legislative Council in the HKU Council. Members have noted that under a Statute of the University of Hong Kong Ordinance, the Court of the HKU (or membership of the advisory body) shall consist of, among others, five Members of the Legislative Council, but there is no representation of Members of the Legislative Council in the Council of the HKU. Some members have held the view that there should be representation of the Legislative Council in the governing body of the HKU to enhance its public accountability. Some other members do not consider it necessary to build in a mechanism in law to provide Legislative Council representation in the Council of the HKU, as not all University Grants Committee (UGC)-funded institutions have Legislative Council representation in their governing bodies, the membership of which is limited.

The HKU has explained to the Bills Committee that the membership composition of its Council comprises two major categories of members, namely, elected students and staff of the University, and external members. There is

currently no membership category for any constituencies, and all members serve the Council as trustees on an *ad personam* basis. While it has no objection to the Legislative Council having a role in its affairs, the HKU considers it inappropriate to add a membership category for a single body, having regard to the membership composition of its Council and the underlying principle of trusteeship. After considering members' suggestions, the Council of the HKU will invite one of the five Members of the Legislative Council in the Court to be a member of the Council on a personal basis.

Such an arrangement can enable Members of the Legislative Council to participate in the affairs of the HKU on the one hand, and ensure the upholding of the principle of trusteeship of the membership of its Council on the other. The HKU stated that in making a decision on the Member to be invited from amongst the five Legislative Council Members for appointment to the Council, it will take into consideration the suggestions from these Members.

President, other than the amendment to be proposed to clause 5(2) of the Bill that I have just mentioned, Dr David LI will also propose an amendment which is textual in nature. The Bills Committee supports these amendments.

President, I will now express my personal views on the Bill.

This Bill is actually the same as the Hong Kong Polytechnic University (Amendment) Bill 2011 just introduced by Dr LAM Tai-fai, as a response to the recommendations made by the Director of Audit in the report published in March 2003, with the objective of proposing legislative amendments to accurately reflect the roles and functions of the Court and the Council to improve governance, and also to make clear changes to the academic titles.

However, with regard to these changes, we are concerned about the protection of the academic freedom of all academic staff. During its discussions, the Bill Committee considered that Language Instructors and Teaching Consultants are, in fact, public intellectuals. Even though they do not engage in research-related work in the university, they, being public intellectuals, should also enjoy good cause protection when they make remarks to criticize public affairs outside the university, so that they can have greater flexibility in criticizing public affairs without having to worry about the consequences.

But much to our regret, the Bills Committee and the HKU have not been able to reach a consensus on this point. This is most regrettable. However, I believe the community and political parties will continue to follow this up later.

On the other hand, why are Members of the Legislative Council so keen to join the Council and monitor the day-to-day governance of the HKU? We very much respect the academic independence and autonomy of the HKU and we appreciate that it should not be subject to any political interference. But from what we have seen before, many labour disputes that are not related to academic freedom have not been resolved in an impartial manner.

This is not unique to the HKU and in fact, the problem is not most serious in the HKU. The problem is most serious in other universities, including The Hong Kong Polytechnic University (PolyU) mentioned by Dr LAM Tai-fai earlier on, as well as the City University of Hong Kong and the Hong Kong Baptist University. These universities are most seriously plagued by the problem. The situation of the HKU is already better.

However, I can cite a few examples right away here. First, their staff union leaders are not given the same treatment upon retirement as that for other retired academic staff who normally can have their employment contracts renewed. Other academic staff generally can have their employment contracts renewed once to twice after retirement. But staff union leaders who often make comments criticizing higher education and political affairs are not given any protection when they reach the age of retirement, while the appeal mechanism is not quite useful, giving the affected staff the feeling that the mechanism is most unfair.

Another example is about a member of the museum curatorial staff. This case was handled by me personally, and a response was given shortly after we had followed it up perhaps because a bill concerning the HKU was being scrutinized by the Legislative Council. That said, the response given by the university was only that this curatorial staff would be transferred to a clerical post and would have his employment contract renewed for six months. This staff member will have to leave the HKU upon expiry of his contract.

In fact, this is undesirable. An employee who is at loggerheads with his immediate supervisor for holding different views on the handling of affairs in the

department may face retaliation, or at least this academic staff feels that he may be subject to retaliation. In respect of non-renewal of employment contract for staff, we must have a very open, transparent complaint mechanism which is considered fair by all relevant parties.

The third example concerns the junior staff of Kadoorie Centre. A managerial staff has been complained against by many junior staff, but there is not a fair mechanism for complaints.

During the past two years, we in the Panel on Education and Mrs Laura CHA of the UGC have followed this up together and eventually formulated a good practice, setting out good handling approaches in the hope that the eight universities will reach a gentlemen's agreement and pledge compliance with these recommendations which include firstly, any complaint received must be dealt with in a timely and speedy manner as far as possible; secondly, efforts must be made to ensure that there is no reprisal or retaliation; and thirdly, external parties should be involved at the final stage of an appeal, so as not to give the complainant the feeling that a decision is made by the university's own people and then an investigation is also carried out by their own people, thus making the complainant feel that it is far from fair.

But still, these are actually not enough. Various political parties and groupings in the Legislative Council and the academic staff of tertiary institutions originally proposed the setting up of a cross-institution complaint mechanism to be made up of, among others, cross-institution academic staff unions. Participation can also be invited from people with credibility in society to assist the tertiary institutions in formulating a set of complaint handling procedures with the involvement of external parties. I believe this can better respond to the demands of the community and academic staff in respect of these labour disputes. It is because, from what we have seen, as in the several examples cited by me just now, particularly in the case of Kadoorie Centre, it is basically not related to academic freedom as it concerns the complaints lodged by front-line junior workers. If the university always evades monitoring by stressing the need to maintain academic freedom and refuses monitoring by the public even in respect of these simple labour disputes, that would be most inappropriate.

President, the second reason why Members of the Legislative Council wish to take part in the day-to-day management of the HKU is that the UGC has

recently introduced a new initiative known as "top slicing". Under this policy, each university is required to set aside a certain percentage of resources annually for injection into a central pool of resources. The universities will then have to submit proposals to compete for these resources in a way similar to tendering. The percentage is actually determined by the eight institutions after many rounds of negotiation. The percentage was initially proposed to be 4% and then increased to 7.5% but was later reduced to 6%.

While healthy competition among the institutions can lead to improvement in quality, we are concerned about the emergence of vicious, market-led competition. Recently, it has been reported in the press that the PolyU, after contributing 6% of its resources, unexpectedly suffered a complete failure in the competition for the resources and did not even manage to get a dollar back. This 6% of resources are equivalent to the resources required for providing 189 year-one places in the university. If we do some calculations, the university would be doomed in only 17 years, as the resources of the university would have then dropped to -2%. Therefore, we are all very worried under this so-called "top slicing" policy.

First, have the universities already taken the resources of places in the arts disciplines or in literature, history and philosophy or humanities for competition among the universities, and have they already mercilessly eliminated these places that do not have instant market effectiveness? Second, when all the universities have injected resources into this "big reservoir" of the central pool of resources, will some institutions submit proposals to increase professional places in business administration or actuarial science or engineering and then take away all the resources, causing the most fundamental liberal arts education and the disciplines of literature, history and philosophy to shrink further and further?

In our discussion with the representatives of the eight institutions in the Panel on Education on Monday just passed, the representatives of these eight institutions said categorically that they had carved out this 6% of resources from various departments evenly for competition. But after competing for the resources, will they channel this 6% of resources into each department evenly? We have no idea. Some people inside The Chinese University of Hong Kong told us that the university has actually taken 9% of the resources of the Faculty of Arts for injection into the central pool for competing. All such information should, therefore, be made public and transparent. At the meeting on Monday,

we obtained the consent of the representatives of the eight institutions for making public all relevant data upon completion of the competition process (under the "top slicing" policy), so that the public will know from which departments the 6% of resources was carved out and into which departments the resources obtained are injected.

Universities are publicly-funded institutions. They certainly can enjoy academic autonomy, but they must also bear social responsibilities. Although some departments may not have instant market effectiveness, universities, being non-commercial institutions, do have the duty and the need to maintain the necessary liberal arts education in universities. In this connection, we will continue to follow this up in the Panel on Education. But it is better for the HKU Council to include members representing the public, so that in the competing process under the "top slicing" policy, monitoring can be exercised at the first stage to ascertain whether universities have taken away the resources of the arts disciplines.

President, this is why the Bills Committee has insisted on the inclusion of Members of the Legislative Council in the Council of the HKU and on this point, discussions had been caught in a deadlock for a very long time. Finally, we made a gentlemen's agreement, and I hope Dr David LI will clearly state in his speech later that the agreement will definitely be honoured. As I said earlier in my report by the Bills Committee, the HKU will invite one of the five Members of the Legislative Council to be a member of its Council. In fact, according to the management of the HKU, apart from Members of the Legislative Council, other people may also be invited to sit on the Council in the capacity of members of the community. I hope the HKU can honour its promise and perform the inherent duty required of a publicly-funded institution of being accountable to society. Thank you, President.

**MR LEE CHEUK-YAN** (in Cantonese): President, we are very much concerned about the governance of universities. Universities are the highest academic institutions, and their governance sets a clear example for Hong Kong. If their governance is unscrupulous, they set an unscrupulous example, and if it is scrupulous, then they set a scrupulous example. We certainly hope that their example is a scrupulous one. The Hong Kong Baptist University (HKBU) has performed quite unsatisfactorily in the recent incident of Luen Fuk Lau. I have

taken a meal there before, and I wonder if Members have ever eaten there. Luen Fuk Lau has defaulted on payment of wages for its employees, and the employer has fled and closed down the business. The HKBU, being the outsourcing agency or organization, has not yet solved the problem of defaulted wage payment. I think it is impossible for the HKBU, being a governance structure, to allow workers hired to provide service to it not even getting their wages. So, we think that the governance of universities indeed sets a very important example.

Turning back to this Bill, I think one word spoken just now is not pleasing to the ears. It is a word used by the Chairman of the Bills Committee when she talked about the objective of the Bill — this is not her fault, as the Bills Committee has all along used this word — it is the word "rectify". What is it that needs to be rectified? Let me explain clearly what needs to be rectified. It is because HKU has taken some wrongdoings to be right for too many years — I wonder if this has been the case for decades or for a century; I have no idea at all — But anyway, it has taken some wrongdoings to be right for many years. Now, we are not rectifying a past mistake made by the HKU or any of its practices in breach of the law. Rather, legislative amendments are made to accommodate its past practices. Why?

We all know that under the Bill, the Court is degenerated from the supreme governing body to the supreme advisory body. As a matter of fact, the Court has always functioned as an advisory body but the provision in law is not quite the same, as it is provided in law that the Court is the supreme governing body, which means that the HKU has all along failed to act in compliance with the law. It is all along stated in law that the Court is the supreme governing body but the university has not acted in compliance with the law. The Court has not functioned as a governing body. Rather, it has been playing the role of an advisory body.

I have been aware of this, as I am one of the five representatives of the Legislative Council sitting on the Court. I believe Dr David LI will recall that on one occasion when I attended a meeting of the Court, after making all the introductions and when the Chairman asked if anyone would like to say anything, I do not know if it was because I was naïve or for other reasons that I raised my hand and put forward my views. The Chairman thanked me and then adjourned the meeting. I raised some issues relating to the governance of universities which has long been my concern, but I found that the Court really did not give

any response at all. I thought about it later and concluded it was perhaps a reflection of its advisory nature, and since it is an advisory body, it does not have to give a response. It is purely advisory in nature, and members of the Court do not have a part to play in governance. The university will only listen to whatever views expressed by the Court and do nothing in response. So, I deeply feel that even the description of the Court being an advisory body is not at all true.

What has to be pointed out today is that while the Court is said to be the supreme governing body over the years, the university has not acted in compliance with the law over the years, and this is a big problem. Now that we are talking about rectification, but this rectification does not mean rectifying a mistake, rather it is an amendment to the ordinance to accommodate a long-standing practice, so that the Court can have its name rectified to become an advisory body. Well, it is actually not quite right to say that its name is rectified because the Court is originally the supreme governing body. Anyhow, the Court is now called the supreme advisory body while the Council is the supreme governing body. This is all clear.

To us, OK, this is all made clear, and we are clear about it from now on. But the problem is that while the Legislative Council selects Members to sit on the Court, there is no involvement from us in the Council because it is not provided in law that there must be representation of the Legislative Council in the Council. There is no such provision in law. We consider this unacceptable. We sit on the Court but it turns out that we were coaxed into joining an advisory body. We thought that it is the supreme governing structure but it turns out that we have joined a fake structure. So, we have joined a fake structure, but what about the authentic structure? Do we have any involvement in the authentic structure? The Bills Committee has all along said that we have no involvement in the authentic structure because we do not wish to provide for this in the ordinance, and there is no such stipulation in other ordinances either. This does strike me as strange. There used to be a clear provision in law stipulating that we can sit on the Court, but this should not be clearly stipulated in law now. We eventually more or less came to the understanding that after those five Members of the Legislative Council have joined the Court, one of them will join the Council, but which one of them? A decision will be made in consultation with the five Members. The Council will then appoint one of the Members to sit on the Council, even though the law does not provide that the inclusion of one



Member of the Legislative Council in the Council be established as a convention. This is the arrangement now, and Members support the proposed amendments of the Bill on the basis of this understanding.

The most important point is that Members of the Legislative Council can continuously monitor the governance of the university on behalf of the public. Ms Cyd HO talked about some problems relating to governance earlier, many of which involve labour disputes, and since she was so high-spirited when she talked about them, let me also talk about some cases. One is about a Council Member, CHAN Che-wai, and I have discussed his case with Vice Chancellor TSUI Lap-chee for several times. Normally, a retired Professor can have his or her contract renewed but his contract was not renewed. He was not only a representative of the staff union, but he was also elected by the staff to sit on the Council. The university may think that he was too outspoken and so, he eventually did not even have the chance to renew his contract. I have discussed this case with Vice Chancellor TSUI Lap-chee for many times. I think this incident is, to a certain extent, an instance of discrimination. It is discrimination against people who dare to speak up and who dare to represent ..... He was an elected representative, but he eventually could not have his employment contract renewed. This is a problem.

I think I have to talk about another issue for the record. It is about Kadoorie Centre which, I think, has a big problem. What is the problem? It involves not only the junior staff, but also two teachers on substantive appointment and a group of junior staff. They made complaints to the management about, among other things, a canteen in the Centre. Originally, the staff can take a meal in the canteen with a meal ticket but the management suddenly told the staff that they could not take a meal there, and the meal tickets were all given to the workers of the renovation contractor. Everyone found it strange as to why the staff welfare was given to the workers of the contractor for no reason at all. I learnt that subsequently — an investigation had been conducted but I do not know the actual results — the contractor was found out to be carrying out renovation works for a Professor. That is a very serious problem. We all know that so long as a complaint is lodged with these structures, a complaint committee will be set up, but after investigation, the complaint was sidestepped with the crucial issues being evaded. What happened as a result? Everyone left. Those junior staff and the two teachers on substantive appointment left after getting their compensation. The Professor and

the management also left. Everyone left. But this is most unfair to the complainants as they did not do anything wrong but lost their jobs eventually. Many of them were employed on contract terms and this is indeed most unfair to them. So, this incident must be put on record. To people like us who are concerned about governance and particularly about the rights and interests of workers, governance is a very important issue. We, therefore, hope that there must be a clear structure with representation of the Legislative Council, so as to monitor the governance of the university.

Ms Cyd HO mentioned earlier that the Panel on Education had discussed yesterday the allocation of an additional 6% of funding resources for bidding by universities. How will this additional 6% of resources be allocated? The universities have to fight for it, but we have now seen the departments fighting with each other like cornered beasts in universities. The description that I used yesterday was that the whole university is like being turned into the Roman Colosseum as they all have become Gladiators. They enter this competition in the Colosseum, and they have to find out which academic disciplines will be able to recover the 6% of resources if this 6% is taken away from them for injection into the central pool. But nobody can be sure about whether it can really be recovered and if not, they will really lose those resources. But this is a very intrusive process, and this is vicious competition because the so-called competition is being carried out within a university with everybody fighting desperately like cornered beasts.

What criteria are adopted by universities for internal resource bidding? I had a feeling of great unease on hearing one of the criteria, namely, the prospects of students. The prospects of students are certainly ..... We might as well make them all lawyers and doctors, and offer programmes only in disciplines with promising career prospects and stop running those with little career prospects. In other words, History can be ousted because nobody knows what career prospects there will be in studying History, and as we have no idea whether graduates in the humanities disciplines will immediately land a job, why do we not plough in all the resources for training graduates to work in the investment banking sector and be remunerated bonuses at a few million dollars? That would be the best career prospects. Is it that all graduates should work for Dr David LI? This is perhaps the way to avail oneself of the best career prospects. Dr David LI said that he could take on more university graduates.

If whether or not an academic discipline should be maintained is decided by the students' prospects, this is actually a philistine approach, a commercialized approach, and an approach that does not respect the culturing of human wisdom. Social development should not be oriented towards money only. If our next generation is trained to be purely money-oriented, this society will have no hopes.

As we all know, the advancement of social civilization does not merely rely on the money-making industries. Social advancement often relies on people who are truly committed to carrying out research studies or who are truly committed to pursuing their researches in certain fields. But these people may not become rich immediately. If we refrain from making investment even in this respect and set eyes only on the career prospects of students and adopt it as a criterion, that would be very dangerous.

Why is this piece of legislation so important? Why is it so important for Members of the Legislative Council to sit on the Court? It is because we are all concerned about university governance. I believe, from the examples cited just now, we can see that with regard to the practices adopted by the university, there is no way for the Court, which functions as an advisory body, to know how the departments are fighting with each other like cornered beasts, but the Council will know how they fight with each other like cornered beasts. I am really interested in knowing how they fight like cornered beasts with each other and how various departments compete with each other for the 6% of financial provisions. I think this does warrant our concern.

Lastly, we are certainly concerned about the issue of substantive appointment. The titles of some lecturers have now been changed and they have become a staff member or teacher without the titles of Professor or Assistant Professor, meaning that they lose the protection of substantive appointment. Or, I should put it this way: They used to not enjoy such protection and they do not have it now and so, this may not be a regression. But our concern is that while they may teach in language subjects, will they be affected in areas which may involve academic freedom? This is certainly what we will closely keep in view in future. When the protection for this group of people is taken away, what will happen next? This is what we will closely monitor.

Another issue of concern to me is that too many academic staff members are employed on contract terms in certain universities. Their employment

contract may be for a term of three years, six years, eight years or nine years. I remember that the HKU has undertaken — my memory may not be correct — that an employee can be offered substantive appointment after around six years of employment, which means that they will cease to be employed on contract terms and can be offered substantive appointment, so to speak. Having said that, this still has to depend on whether or not the department has the funding. That would be a serious problem, because if it depends on whether or not the department has the funding and if some departments never have sufficient funding, the employees will never be offered substantive appointment. I think this is unfair, and it is unreasonable to offer substantive appointment to employees when a department has sufficient funding and when it does not have sufficient funding, the employees will forever remain as contract staff. This is so unjust, and this is also an unfair phenomenon. I very much wish that this unfair phenomenon can be rectified.

President, these problems are involved in governance which is an issue of concern to us. We hope that a fair environment can be provided for academic staff to conduct researches and teaching in universities and to nurture our next generation. Thank you, President.

**MISS TANYA CHAN** (in Cantonese): President, on behalf of the Civic Party, I speak in support of the resumption of the Second Reading debate on the Bill today.

The Civic Party supports the Bill in clearly defining the roles as well as powers and functions of the Court and the Council of the HKU, such that clarity in the governance structure of the HKU can be enhanced. We believe a clear university governance structure will help the HKU in continuously promoting higher education and upholding academic freedom, thereby achieving effective passing on of knowledge.

During the scrutiny on the Bill, one of the greatest concerns raised by Members is that the views expressed by members of the community will not be fully taken into consideration and respected by the HKU and will not be specifically reflected in the operation of the university after the division of responsibilities between the Court and the Council of the HKU is clarified. In recent years, the standard of governance and the mechanism for handling internal

complaints of tertiary institutions have been a long-standing concern in society. Many members of the community are worried that the mechanism will degenerate into a tool for suppressing academic freedom. For this reason, this Council was very careful in scrutinizing the adjustment of the university governance structure. This is also one of the reasons why the scrutiny on the Bill has taken quite some time.

Both the HKU and the Administration stressed at meetings of the Bills Committee that after the passage of the Bill, more voices of Members of the Legislative Council will find their way into the Court of the HKU and that the Council will attach great importance to the views of the Court. The Civic Party welcomes this. We hope that the Administration and the HKU will honour these undertakings to further enhance openness and transparency in the operation of the university, so that each and every member of the public will see that the HKU is an academic cradle that respects academic independence and autonomy.

In the course of deliberations on the Bill, some colleagues proposed that the HKU should make reference to the arrangements made by other universities and allow more representatives of Members of the Legislative Council to sit on the Council to directly take part in decision-making in respect of the operation of the university. The Civic Party considers that the role of Members of the Legislative Council in a university is actually no more than exercising monitoring and giving independent opinions, rather than seeking to influence the administrative and academic decisions of the university through their direct involvement in the decision-making process. We hold that the day-to-day affairs of the university should be handled by the academics and independent members, and it already suffices as long as the views of the representatives of Members of the Legislative Council are duly taken into consideration and given weight. We, therefore, support this Bill today.

President, traditionally, there has been an inseparable relationship between the development of the HKU and the development of Hong Kong. Many leaders in society and various trades and industries are graduates of the HKU. The HKU has been the cradle and birthplace for many major students' movements and social movements in Hong Kong over the years. A free and open environment is absolutely the prerequisite for nurturing our next generation to become social leaders and for spurring the civil society in Hong Kong to continuously move forward in future. I hope that the passage of this Bill today will signify the

HKU upholding this tradition and upholding a free and open academic environment more effectively.

I all the more hope that with the passage of the Bill, the improved governance structure of the HKU will provide a new basis for the HKU to develop a fairer and more transparent mechanism for administration, distribution of resources and handling of complaints. It is only through a fair distribution of resources to support the development of different academic disciplines and a humble attitude in addressing the needs, difficulties and disputes in the operation of the university that an ideal academic environment can be assured for academic staff and students in the university to pursue diversified development.

President, the HKU boasts the longest history among the many universities in Hong Kong. We hope that the HKU can improve its governance and set a good example for various tertiary institutions in Hong Kong, so that governance in the tertiary education sector will be geared up to develop in the right direction continuously, thereby nurturing more talents with good civic qualities and laying a solid foundation for the future development of Hong Kong society. With these remarks, I support the motion. Thank you, President.

**DR PAN PEY-CHYOU** (in Cantonese): President, on behalf of the Federation of Trade Unions, I support the resumption of the Second Reading debate on the University of Hong Kong (Amendment) Bill 2010.

This Bill is comprised of two significant parts. The first is replacement of the old academic titles under the existing University of Hong Kong Ordinance by new academic titles. The second significant change is to clarify the roles and powers of the Court and the Council. I will briefly explain them and then talk about my views.

Since 2004 the University of Hong Kong (HKU) has adopted new academic titles. The old academic titles comprising Readers, Senior Lecturers, Lecturers, Assistant Lecturers, and so on, have been replaced by the new titles of Chair Professors, Professors, Associate Professors and Assistant Professors.

These two sets of titles do not only involve changes in nomenclature. They are also different in the basis for advancement and for granting titles.

With regard to the old titles, it is only when a vacancy arises in the relevant faculty or department that a teacher can apply for advancement to the relevant post based on their qualifications and the academic researches they have conducted or papers they have presented.

The new set of titles adopted since 2004 is primarily based on merits of teachers in that they can obtain a relevant title as long as they meet the required qualifications. Besides, the HKU has since 2004 given those academic staff who are engaged in teaching but are not given the status of "Teacher" the title of "Lecturer" under classes I, II, and III. These staff members are exclusively responsible for teaching but under the University of Hong Kong Ordinance, they are not given the status of "Teacher" and hence cannot enjoy the benefits for "Teacher", such as the good cause protection mentioned earlier on. I will briefly explain its meaning later.

The other significant change is about clarifying the roles and powers of the Court and the Council. Under the existing University of Hong Kong Ordinance, the Court is the supreme governing body in name but in practice, under the HKU Statutes, the role of the Court is actually just an advisory body, or it can be considered as the supreme advisory body of the university, but it is actually the Council that is truly managing the university. In view of this, the current amendment exercise aims to rationalize the inconsistency or conflict between the actual situation and the existing ordinance.

During the discussions of the Bills Committee, we have also touched on the issues of academic freedom and the independence and autonomy of the university. I think these issues warrant our review and consideration.

From these changes made to the academic titles now, I realize that there is actually a great difference in the system of academic titles for academics in universities in places all around the world, and even universities in the same country may adopt different systems. But broadly speaking, the old academic titles long adopted by the HKU are generally used by British and Commonwealth universities, whereas the new academic titles that we are talking about now are commonly adopted by universities in North America. So, different academic titles are used in these two regions, and there are other systems adopted in other countries in the world.

I think the adoption of new academic titles by the university does carry a positive meaning. Firstly, the academia is indeed quite strongly influenced by North America which plays a leading role in many aspects. Therefore, if the academic titles in the academic structure in Hong Kong are aligned with those of North American universities, it would help bring the academia in line with the mainstream of the world. With the benefit of such alignment, it would be easier for academics to know each other's status in the course of exchange, and it would enable academics from North America or elsewhere to more easily understand the academic levels of local academics from their titles.

Moreover, these titles also have certain advantages in the recruitment of academics from North America. For example, a Professor from the United States will not become a Senior Lecturer in Hong Kong, which would otherwise give him a feeling of demotion. The "3+3+4" academic structure that has been introduced in Hong Kong recently is also drawing close to the North American system. Therefore, the changes in the academic titles in the university are merely a development in line with the general trend.

Next, I would like to talk about academic freedom. In the history of development of human beings, academic freedom is, in fact, a valuable legacy of the lessons of bloodshed. We have seen in history many tragedies resulted from religious or political interference in academic studies. For example, Galileo and COPERNICUS, who were both famous scientists, were attacked severely and even killed for insisting on their beliefs and holding dissenting views from the powers-that-be. So, if the academia is subject to religious or political interference, academic development will be seriously stifled.

As we all know, when scientists or academics conduct researches and academic studies, there must be ample room for them to make assumptions for various possibilities, and there must be ample room for them to carry out experiments and tests on these possibilities and assumptions. More importantly, when they have discovered or ascertained the truth, there must be ample room and channels for them to publish their findings. Only in this way can other people be influenced and human knowledge be upgraded for progress and innovation to be achieved in society.

This is why when the Western academic structure was introduced into China, the academics in China had already attached great importance to the



tradition of academic freedom and autonomy. CAI Yuanpei, a well-known former president of Peking University, is the best example, for he encouraged people of varying political views to teach and work in the university.

How should we protect academic freedom? We should look at it at two levels. The first is a personal level, and the second is the level of the university as part of the social establishment. At the personal level, academic freedom can be assured through the terms of employment. When an academic can prove that he has the competence and motivation to engage in teaching unrelentingly and carry out ongoing research studies, this academic should be offered an employment contract for a long term, so that he can work with ease of mind. This aside, the "good cause protection" adopted by the HKU is also another safeguard. In other words, the university, being the employer, cannot terminate the employment of this academic without good reasons, which would otherwise deprive the academic of the means to make ends meet. This is also a measure for the protection of academic freedom.

On the other hand, the university must also be protected. Firstly, in respect of funding, while some universities can raise funds on their own to maintain their operation, most universities depend on public funding. The funding mechanism is normally not directly controlled by the Government. Rather, members of the public and independent organizations will decide how the provisions should be made to different universities.

Moreover, universities must also strive for autonomy in their administration to ensure that teachers in universities can be provided with protection at the same time to fully give play to academic freedom. At present, the HKU has excluded some members of the teaching staff from the rank of Teachers, which means that they are not incorporated into the category of Teachers. I think the reasons given by the university are not well-justified. According to the information provided to us by the university, these teaching staff do not engage in research-related duties and are responsible for teaching only. But what difference is there between these staff members and the other teachers who are required to discharge the duty of knowledge transfer? I think since these staff members are engaged in the teaching of classes, which means that they can influence the students, they should enjoy the same treatment as that for Teachers and be covered by "good cause protection". The university has undertaken to improve the terms of employment for these staff members, such as allowing them membership of Faculty Board and Board of Examiners, and the

rights to nominate and vote for Faculty Board Chairmanship and Senate members, and so on. These are very good initiatives which will give them more rights and more involvement in the administration of the university. This is a right direction, but we hope that the university can truly allow this group of Lecturers to enjoy the real rights and grant them the status of Teachers.

Another issue is about allowing Members of the Legislative Council to participate in the administration of the university. I think this arrangement has certain merits, because Members of the Legislative Council have a better understanding of the aspirations of the people and so, their participation in the administration of the university will enable the university to more closely keep tabs on the public sentiments in its decision-making, and this will be conducive to the promotion of the development of the university. But on the other hand, I am a bit worried because this proposal has some shortcomings. Members of the Legislative Council are people engaging in political work. When Members of the Legislative Council participate in the governance of the university, they will take politics into the university. In other words, the struggle between political parties will then find its way into the university.

Members of the Legislative Council do not have many powers now, and there is not much that they can do apart from debating political issues here in this Chamber. But following the gradual evolution of the political system in Hong Kong, we cannot rule out the possibility of Members and the Government forging an alliance or some other developments emerging one day. If that happens, Members would be given greater powers and by then, they would become another "hand" of the Government extending into universities. For this reason, we must be very careful in dealing with this issue. As a matter of fact, there are many other channels for monitoring the operation of universities.

This year marks the centenary of the HKU, and the HKU has organized many celebration activities. Over the past century, the HKU has nurtured a large pool of talents for Hong Kong and China, making remarkable achievements and acting as a locomotive pulling the development of higher education in Hong Kong. As an alumnus and a former teacher of the HKU, I have very deep affections for the HKU. I sincerely wish that my alma mater will continuously nurture more talents for Hong Kong, for the country and for the world, and sail the ocean of knowledge courageously. I so submit.

**DR MARGARET NG** (in Cantonese): President, I am not speaking on behalf of the Civic Party, rather, I am expressing my views in my capacity as a member of the Convocation mentioned in section 9 of the University of Hong Kong Ordinance. Although I did not join the Bills Committee, I have read its report and the background information, as well as some of the information provided by the HKU to the Bills Committee in the course of scrutinizing the Bill.

President, the Bill is mainly divided into two parts. The first part is not controversial and only involves making changes to the academic titles of staff members. There is not much controversy in this area. If the University wants to change them in this way, so be it. As to the second part, however, I do not consider it absolutely necessary. This part involves making changes to the role of the Court of the HKU, that is, whether it is a supreme governing body or a supreme advisory body. Such a change is totally unnecessary. After reading the information provided by the Director of Audit, I still do not understand why he wanted to interfere with the HKU and wanted it to make such a change. This recommendation is tantamount to cooking a crane for meat and burning a stringed instrument for fuel, in that it seeks to change a provision and a concept with cultural and historical background in such a way. Unfortunately, it turned out that the HKU really complied with the Director of Audit by proposing these amendments.

President, all of us have focused on the term "governing", thinking that in fact, the Court is not responsible for governance and only plays an advisory role, so it has no real power. However, I call on Members to look at section 7 of the existing University of Hong Kong Ordinance. What are the powers of the Court as stated in this provision? I will read it out in English, "The Court shall, subject to the provision of this Ordinance and the statutes, be the supreme governing body of the University.". This means that it is a governing body. Unfortunately, the term "governing" was translated as "管治" in Chinese. How does it govern? It exercises its powers according to this Ordinance and the rules in this Ordinance. What actually are the rules? In fact, they should be called the Statutes. In statue XVII, it is stated clearly how the Court shall effect governance. Let me also read it out in English. The first is to "recommend to the Chancellor additions to or the amendment or repeal of any statutes on the proposal of the Council". It only makes recommendations and proposals on the amendment of the Statutes. As regards the other statutes ranging from items (a) to (f), apart

from appointing members to the Council, the other duties are nothing more than considering annual accounts, considering and discussing any reports submitted by the Council to the Court and the last item mentioned therein, namely, appointing life Court members, is only a ritual. The Bill on this occasion does not change statute XVII in any way and that means the actual powers of the Court have not changed. The problem is that all along, the term "governing" is used in the Ordinance but the meaning of "governing" is not "管治". What is called a supreme "governing body" reminds me of the Chinese term for the "Governors" of Hong Kong of the past, which is "總督". This so-called "supreme governing body" is only the supreme body to which one is accountable. It is the supreme body, so the Council has to be accountable to it and this is what it is all about.

It is for this reason that there are so many members in the Court. In view of this, will the Court tell the Council what to do on all matters? The Council has the full power to deal with all administrative matters. We only have to look at this Ordinance to know clearly that such is the arrangement. This being so, why is it necessary to make such an amendment? Therefore, I consider the amendment unnecessary and there is some misunderstanding of what is meant by "governing", as it is considered that a "governing body" is responsible for deciding everything and has the say, so it must have powers, rather than just being the supreme body to which one is accountable.

President, the University of Hong Kong Ordinance was passed in 1958 and the initial founding legislation of the HKU was passed in 1911. We can look up a book about the early history of the HKU published in 1980 entitled *The University of Hong Kong*, which was written by Bernard MELLOR. President, when you and I were studying in the university, he was the Registrar of the university and this book was written by him. According to the information cited by him in the book, the HKU established its Court and Council on 28 April 1911 and academic instruction only began the next year. Therefore, on that day, that is, 28 April 1911, the Court and the Council of the University held their meetings in the morning and the afternoon respectively. In the first meeting of the Court, what was the first item on the agenda? It was to read out a 25-page-long list of donors of money and land. For example, the Hong Kong colonial Government at that time, that is, "the Crown", or one can say the British Government, granted the site of the university to the HKU. In addition, be it in Peking or various provinces in China, people also donated money to establish this university in

Hong Kong and overseas Chinese, Chinese businessmen, the Hong Kong Union of Chinese Workers in Western Style Employment, and even various trades and industries in the community, such as the Ng Fung Hong or the business community, also made donations. Some ordinary members of the public even donated \$20 — of course, that was a lot of money at that time. The main aim of the meeting was to read out the names of these people.

This former Registrar of ours ..... I have to see if he was the Registrar ..... Yes, he was the Registrar ..... he said that the HKU was a "civic university" and it was different from the University of Oxford or the University of Cambridge, which had their origins in monasteries, that is, they are universities with religious origins, whereas the HKU is a civic university. For this reason, its Charter was modelled on those of new civic universities at that time, in particular, that of the Leeds University, with a Court, Council and Senate. Why does the HKU nowadays have this kind of system? It has its historical origin. Of course, the term "Court" has a historical meaning. In the past, banks in the United Kingdom also had their Courts. What were these Courts? In fact, they had the meaning of "corporation". If you look at the Harvard University, its supreme governing body is also called a "corporation", that is, the "Harvard Corporation", that is, a member or the accountable body of a civic organization. Therefore, this is the origin of the HKU.

Therefore, President, why does the word "Court" have such a meaning? This is because the establishment of a university depends on the efforts and resources of society, so after its establishment, it is rooted in society and naturally, people in various sectors of society will become members of the Court of the HKU, which is just like a microcosm of society, so the Council has to answer to this microcosm of society, that is, the Court. This is really a most meaningful tradition but now, we are going to change it into a supreme advisory body. I really have to tell you that this really makes me not know whether to laugh or to cry.

President, why was the present Ordinance adopted in 1958 in place of the one in 1911? The reason is that under the Ordinance in 1911, in the past, many members of the Executive Council, Members of the Legislative Council and government officials were all members of the Court. Therefore, in 1958, two persons, JENNINGS and LOGAN, conducted a review and made some

far-reaching recommendations, mainly to make the university independent and autonomous by excluding virtually all government officials and leaving only a small number of officials in it, for example, five Legislative Council Members, so that the university can handle its own affairs independently and autonomously. However, it can be noted from the information provided by the university to the Bills Committee that since the reform in 1958, the actual operation of the Court has never been changed. The reform in 1958 was designed to achieve independence and autonomy and the central issue was finance. Under the Ordinance in 1911, the university was under the control of the Government because the university used public funds. Public funds accounted for a large proportion of the expenditure of the university, so it was believed that the Council had to explain to the Court, in which there were many official members, how the financial resources were used, so as to exercise control.

It is said that one of the foregoing two persons was an outstanding constitutional lawyer and the concept proposed by him was exactly the prototype of the existing University Grants Committee (UGC) — the university had to be accountable to the UGC, which was responsible for the allocation of funds, so that the university could be financially independent and make the so-called "triennium" plans, or three-year or four-year plans. He even recommended the making of block grants, so that the university could be autonomous and free from the constant intervention of the Government from then on. That was a very important component. When was the introduction of this component accomplished? President, it also happened when both you and I were in the university. The Vice-Chancellor of the University at that time, Dr Kenneth Ernest ROBINSON, was mainly responsible for the introduction of block grants, so that the university could become independent and autonomous and enjoy a high degree of financial autonomy. Of course, the university must still be accountable. This is how the framework came about. President, however, today, we say that the Court does not live up to its name, that originally, it was only an advisory body but for some unknown reason, it is called a governing body, so reforms are needed. This kind of opinion mainly stems from a lack of proper understanding of the origin of the HKU and the operation of various provisions in the University of Hong Kong Ordinance.

President, one last point that I wish to raise is whether or not Legislative Council Members should only join bodies that have powers. Some people say that since the Court is only an advisory body, it is better for Members to join the Council instead. I think this is again tantamount to degradation but it does not

matter. If Members want to do so, there is nothing we can do. However, I think that being members of society, we really should care about all matters relating to the HKU, so that the HKU can operate properly and with autonomy, instead of asking what powers we can have over it all the time. Therefore, on this point, I agree with the stance expressed by Miss Tanya CHAN on behalf of the Civic Party. In fact, we only have the right to express our views as a formality, so we should not care about how much power we have to sway the policies of the university.

President, the most important consideration today is what aspirations Sir Frederick John Dealtry LUGARD and so many members of the civil society had in founding the HKU. President, today, I do not oppose this Bill because unfortunately, the HKU itself has asked for such a change, so I have no choice but to respect it and support this Bill. Thank you.

**MS STARRY LEE** (in Cantonese): President, first of all, I have to declare my interest as a council member of the Hong Kong University of Science and Technology (HKUST). I am now speaking on behalf of the DAB in support of the Bill.

The Bill has three aims: First, to amend the University of Hong Kong Ordinance according to Report No. 40 of the Director of Audit released in March 2003 to ensure that the statutory roles of its Council and Court truly reflect their actual duties, that is, the Court is the "supreme advisory body" and the Council, the "supreme governing body" of the HKU. Second, to change the academic titles of the teaching staff, but I am not going to dwell on this point. Third, to make transitional provisions to protect the employment of teachers retaining the old academic titles.

Originally, when I initially looked at these amendments, I thought that they were all technical and expected the scrutiny to be completed after a couple of meetings. However, Members can note from the report of the Bills Committee that we have held five meetings in total. Moreover, the House Committee decided to establish the Bills Committee on 26 November 2010 but the Second Reading only resumed today, so more than half a year has passed. Compared to the relatively minor technical amendments, it has taken a very long time. Just now, a number of Members have mentioned the key reason, that is, the Bills Committee spent a lot of time discussing how Legislative Council Members can

join the Council of the HKU, which is the true supreme governing body of the HKU.

Concerning the issue of the university arranging for Legislative Council Members to join the governing body, of course, the DAB expresses its support and respect because Legislative Council Members can help the governing body understand public opinions better. However, in the course of scrutiny, it was opined that a provision should be included in the legislation to mandate that the Council must appoint one or two Legislative Council Members elected by Members from among themselves. I have some reservation about mandating the inclusion of such a provision in the Bill.

First, we have to look at the functions of the Council. As the supreme governing body, of course, it has to handle all the internal affairs of the HKU and all matters, ranging from administration, finance, university affairs through negotiations with the University Grants Committee (UGC) to other matters, have to be handled by the supreme governing body and they all fall within the scope of the internal affairs of the HKU. All along, we have insisted that there must be academic freedom and that the autonomy of all universities must be respected. If we mandate that it be set down in the legislation that the HKU shall appoint to its Council two Legislative Council Members elected by all Members from among themselves, I think it must be proven that this arrangement of including Legislative Council Members as members of the Council is absolutely necessary.

In the meetings of the Bills Committee, the representatives of the HKU told us that at present, the membership composition of its Council comprises two major categories of members, namely, elected students and staff of the University, and external members who are not students and staff of the University. There is currently no membership category for any constituencies, and all members serve the Council on an *ad personam* basis. If the special request that Legislative Council Members must serve as *ex-officio* members is made, I think it must be proven that such an arrangement is absolutely necessary.

Except in Singapore, no universities worldwide provide for a special category of members from the legislature in their governing bodies. As regards the councils of UGC-funded institutions, apart from the HKU, only The Chinese University of Hong Kong has a statutory provision for the election of Legislative Council Members to its Council. The HKUST and The Hong Kong Polytechnic



University also have members appointed by the Chief Executive to their Councils in their capacity as Legislative Council Members. Of course, I am sure that Legislative Council Members who join the Council now or in the future definitely will not interfere with the academic freedom of the university. However, if we wish to require the establishment of a mechanism in the provisions of the legislation, we have to hold careful discussions.

Therefore, I absolutely support the flexible approach adopted now, that is, after discussions with the Bills Committee, the Council of the HKU agreed to invite one of the five Legislative Council Members sitting on the Court to become a member of the Council in his/her personal capacity. I hope that Dr David LI can confirm this point in his speech later, so that Legislative Council Members can bring the views of the public into the Council of the HKU.

President, I so submit.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If not .....

(Mr Abraham SHEK raised his hand)

**PRESIDENT** (in Cantonese): Mr Abraham SHEK, do you wish to speak?

**MR ABRAHAM SHEK** (in Cantonese): President, I have to declare my interest as the representative of the Legislative Council in the Court of the HKU. President, I also declare my interest as one of the members of the Public Accounts Committee (PAC) when the review of the HKU was conducted.

Just now, Dr Margaret NG talked about the history of the HKU, but we cannot look at history from the perspective nowadays. The PAC only considered the legal aspect. The law is written so very clearly. It is a governing body, the supreme governing body but this is not the actual situation. The PAC only urged the HKU to amend the provisions of the Ordinance. This is that simple and the HKU subsequently did so.

We cannot deal with all matters by enacting legislation and demand that the law spells out the responsibility and what should be done clearly, since this has been the practice in history. In the British-Hong Kong era of the past, many things were done loosely without strict regulation because there was no monitoring by the Legislative Council. At that time, all Legislative Council Members were appointed, so how could this be done? That was the approach at that time, but times have changed. This is why the PAC asked the HKU to amend the provisions.

At that time, the Ordinance requires five Legislative Council Members to be included and Legislative Council Members were appointed at that time, so their influence was even greater than that of Members nowadays. In this regard, we have to understand the history. Moreover, the provisions are very clear, so the PAC considered it necessary to take this course of action and the auditor also made such a recommendation, so subsequently, the Legislative Council dealt with this matter in this way. All these are matters that I wish to point out.

Another point is that there are five Legislative Council Members who are members of the Court and now, it is demanded that changes be made, so this is different from the original provision. If it is suggested that the Legislative Council should not carry out any monitoring and that there should not even be a single member, so that the Council can become the governing body (that is, the supreme governing body), this is at variance with the original provision. Therefore, this is why the Legislative Council put forward such a proposal, believing that at least one Legislative Council Member should serve as a member of the Council, so that an arrangement for the Legislative Council can be introduced when the Court no longer has the powers of a governing body. This is how we explained this matter in the Bills Committee.

At the same time, the HKU is very concerned that its academic freedom would be affected due to the inclusion of a Legislative Council Member.

However, just consider this: Is one Legislative Council Member in the Council capable of influencing the Council, which has over 20 members? That is not possible. The HKU is afraid of the inclusion of any Legislative Council Member, particularly after the HKU found that Legislative Council Members could ask questions in such a way, so it thinks that it is most preferable to avoid such troubles. However, we do not want to cause trouble, rather, we have the responsibility. Just now, Dr Margaret NG said that this Ordinance was enacted in 1958 to give us this kind of powers. If we give up these powers, we still have to give an account to the Legislative Council of the future. We should not just look at the present situation or just look at it from the historical perspective. We should move forward with the times and make rectifications in various areas.

Subsequently, the HKU explained the whole situation very clearly, so that we can put our minds at ease. The arrangement was to appoint one of the five Members in the Court to the Council, so as to resolve this issue satisfactorily.

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 Dr David LI to reply. This debate will come to a close after Dr David LI has replied.

**DR DAVID LI:** President, the University of Hong Kong (Amendment) Bill 2010 has its origins in a Review of the governance and management structures of the University of Hong Kong conducted in the year 2003. The Review identified an inconsistency between the roles of the Court and the Council as described in the University of Hong Kong Ordinance and in the University Statutes.

These findings were supported by the Director of Audit Report Number 40 and by the subsequent examination by the Public Accounts Committee of this Council.

This Bill implements the recommendations proposed in the Review, specifically that the University Court be described as the "supreme advisory body" of the University and the University Council be described as the "supreme governing body".

The Bill also implements the decisions of the University Council and the University Court to adopt new academic titles.

Specifically, the Bill recognizes the academic titles of Chair, Professor, Associate Professor and Assistant Professor in place of the titles of Reader, Senior Lecturer, Lecturer and Assistant Lecturer.

During the deliberations at the Bills Committee, representatives of the staff association and employees' union expressed concern that those electing to retain their old titles also retain all their existing rights and privileges. While the original draft of the Bill already provided such guarantees, in order to put the matter beyond doubt I will introduce a Committee stage amendment to clarify this intent.

At the Bills Committee, a number of Members spoke of their hope that Members of the Legislative Council should be appointed to the University Council, once the Council is formally recognized as the supreme governing body of the University.

The Council subsequently resolved to invite one of the five Legislative Council Members on the Court to be a member of the Council under the category "six persons, not being students or employees of the University, appointed by the Council".

The resolution made clear that this appointment should be on a personal basis and that the appointee should serve as a trustee and not as a delegate of a particular constituency. While the Council retained full discretion on the Member to be invited from amongst the five Legislative Council Members, it would take into consideration possible suggestions from these Members in making its decision.

The administration of the University of Hong Kong has asked me to thank Honourable Members for the care and attention that they have devoted to review

of the University of Hong Kong (Amendment) Bill 2010. I wish to extend a special thank you to the Chairman of the Bills Committee, Ms Cyd HO, who managed the deliberations so effectively.

I also wish to thank all members of the University community who submitted their views on this Bill.

President, I so submit. And I take pleasure in recommending the Bill to Members.

Thank you, President.

**MR IP KWOK-HIM** (in Cantonese): President, I wish to declare my interest as a member of the Court of the HKU elected by Legislative Council Members from among ourselves.

**DR RAYMOND HO** (in Cantonese): President, I also wish to declare my interests. I am a graduate of the HKU and at present, I am an Honorary Fellow of the HKU as well as a Visiting Professor of the HKU SPACE.

**PRESIDENT** (in Cantonese): Does any other Member wish to make declarations of interest?

(No Member indicated a wish to such declaration)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the University of Hong Kong (Amendment) Bill 2010 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority 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.

**CLERK** (in Cantonese): The University of Hong Kong (Amendment) Bill 2010.

Council went into Committee.

### **Committee Stage**

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

### **UNIVERSITY OF HONG KONG (AMENDMENT) BILL 2010**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the University of Hong Kong (Amendment) Bill 2010.

**CLERK** (in Cantonese): Clauses 1 to 4 and 6.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority 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.

**CLERK** (in Cantonese): Clause 5.

**DR DAVID LI**: Chairman, I move the amendments to clause 5. These have been set out in the paper sent to Members. The first is a technical amendment that applies to the English version of the Bill only. It replaces the preposition "on" with the preposition "against" in order to improve the clarity of the clause.

The second amendment is in response to concerns raised regarding University academic staff who retain the old title of "teacher". The amendment provides added assurance that their current status and benefits will not change as a result of this Bill.

The Bills Committee has discussed and expressed support for the amendments, and I ask Members to endorse them.

*Proposed amendment*

**Clause 5 (see Annex I)**

**CHAIRMAN** (in Cantonese): Members may now jointly debate the original clause and the amendment to it.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the

amendment moved by Dr David LI be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority 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 amendment passed.

**CLERK** (in Cantonese): Clause 5 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 5 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority 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.

**CHAIRMAN** (in Cantonese): Council now resumes.



Council then resumed.

### **Third Reading of Members' Bills**

**PRESIDENT** (in Cantonese): Member's Bill: Third Reading.

### **UNIVERSITY OF HONG KONG (AMENDMENT) BILL 2010**

**DR DAVID LI**: President, the

University of Hong Kong (Amendment) Bill 2010

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the University of Hong Kong (Amendment) Bill 2010 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority

respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**CLERK** (in Cantonese): The University of Hong Kong (Amendment) Bill 2010.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under Rule 85 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region.

I now call upon Mrs Sophie LEUNG to speak and move her motion.

## **PROPOSED RESOLUTION UNDER RULE 85 OF THE RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

**MRS SOPHIE LEUNG** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, in my capacity as Chairman of the Committee on Members' Interests (CMI), I move under Rule 85 of the Rules of Procedure (RoP) to resolve that Mr Abraham SHEK be admonished for failing to disclose the nature of his interest, contrary to Rule 83A of the aforesaid Rules.

Rule 83A of the RoP provides that "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.".

Mr SHEK has been an independent non-executive director (INED) of the MTR Corporation Limited (MTRCL) and the MTRCL would be granted a service concession for the operation of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL Project). However, Mr SHEK failed to disclose the nature of his pecuniary interest in the project to construct the XRL Project by virtue of his being an INED of the MTRCL before

speaking at the meetings of the Subcommittee on Matters Relating to Railways (Railway Subcommittee) of the Panel on Transport of the Legislative Council (the Panel) held on 6 November, 16 November and 17 November 2009.

While admitting it was an oversight on his part for not disclosing the nature of his pecuniary interest in the XRL Project when he spoke at the relevant Railway Subcommittee meetings by virtue of his being an INED of the MTRCL, Mr SHEK was of the view that he should not be admonished by a motion to that effect under Rule 85 of the RoP as his oversight should be looked at as technical in nature given the absence of any detriment to the public or the Legislative Council.

Mr SHEK pointed out that he had declared that he was a director of the MTRCL at previous meetings of the Panel and the Railway Subcommittee on other matters. The CMI has noted that Mr SHEK had registered his interest as an INED of the MTRCL in the Register of Members' Interests and he had declared his interest as an INED of the MTRCL at previous meetings of the Panel and the Railway Subcommittee on matters related to the MTRCL.

The CMI is of the view that since Rule 83A of the RoP expressly provides that a Member shall disclose his pecuniary interest in the matter under consideration by a committee, Mr SHEK should be aware of his obligation but he did not disclose his interest as a director of MTRCL when he spoke on the XRL Project during the relevant meetings of the Railway Subcommittee. Nonetheless, the CMI accepts Mr SHEK's admission that it was an oversight on his part for the non-disclosure and that he had no intention of hiding his interest as an INED of the MTRCL.

The CMI recommends that Mr SHEK be admonished by a motion to that effect in accordance with Rule 85 of the RoP which is the lightest sanction under the Rule.

In view of the rising public expectation of the conduct and propriety of a Legislative Council Member, the CMI calls upon all Members to stay alert and be vigilant in observing the requirement to disclose their pecuniary interests as provided in the relevant provisions of the RoP of the Legislative Council in order to uphold the credibility of the Council.

President, I so submit.

**Mrs Sophie LEUNG moved the following motion: (Translation)**

"RESOLVED that having considered the report of the Committee on Members' Interests made to this Council on 22 June 2011 under Rule 73(1)(e) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region in relation to its consideration of a complaint against Honourable Abraham SHEK Lai-him, Honourable Abraham SHEK Lai-him be admonished for failing to disclose the nature of his pecuniary interest in the project to construct the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL Project") by virtue of his being an independent non-executive director of MTR Corporation Limited before he spoke on the XRL Project at the meetings of the Subcommittee on Matters Relating to Railways of the Panel on Transport of the Legislative Council held on 6, 16 and 17 November 2009, contrary to Rule 83A of the aforesaid Rules."

**DR PHILIP WONG** (in Cantonese): President, a point of order.

Rule 41(5) of the RoP provides that "A Member shall not impute improper motives to another Member."

May I ask the President to rule whether or not Mrs Sophie LEUNG's motion has contravened this provision.

**PRESIDENT** (in Cantonese): In order to carefully consider this point raised by Mr Philip WONG, I now suspend the meeting.

5.44 pm

Meeting suspended.

5.51 pm

Council then resumed.

**PRESIDENT** (in Cantonese): After Mrs Sophie LEUNG's speech on the motion

earlier on, Mr Philip WONG requested me to make a ruling. Mr WONG requested me to rule whether or not Mrs Sophie LEUNG's motion has contravened Rule 41(5) of the RoP, which provides, "A Member shall not impute improper motives to another Member.". Rule 41(5) of the RoP governs the speeches of Members, rather than the contents of motions.

Mrs Sophie LEUNG moved the motion under Rule 85 of the RoP. Under Rule 85, any Member who fails to make the necessary declaration under Rule 83A may be sanctioned by the Council in several ways. Just as Mrs Sophie LEUNG said in her speech, to be admonished by a motion to that effect is the lightest sanction under the Rule.

After hearing Mr Philip WONG's request, I carefully went through Mrs Sophie LEUNG's speech script again. She was only reading from her script. I cannot see anything in it that contravenes Rule 41(5), that is, there is nothing that imputes improper motives to any Member, in particular, Mr Abraham SHEK. She only stated why she moved this motion. Therefore, I rule that both the motion moved by Mrs Sophie LEUNG and the speech delivered by her just now conforms to the RoP. However, I have to point out here that since Members have been reminded of the requirement in Rule 41(5) of the RoP, in the ensuing debate, please note that Members cannot impute improper motives to another Member in their speeches.

I now propose the question to you and that is: That the motion moved by Mrs Sophie LEUNG be passed.

Does any other Member wish to speak?

**PROF PATRICK LAU** (in Cantonese): President, this meeting is the last one in the current Session of the Legislative Council held in this venue. Many reporters have invited me to examine this building because we are going to move to the Legislative Council Complex at Tamar.

I showed reporters around. As we all know, originally, the Legislative Council Building was the Supreme Court of Hong Kong and one of the features of the building is that at the rooftop, there stands the statute of the goddess of

justice. Her eyes are blindfolded and she holds a balance that signifies justice.

However, I do not understand why something so unjust has happened in this place that represents justice. The proposed resolution is about Mr Abraham SHEK's failure to declare his interest as a director of the MTRCL before speaking at the meetings of the Railway Subcommittee, so some indirect pecuniary interest may be involved. I think it is most unfair to determine that it is necessary to admonish Mr Abraham SHEK on this ground.

As Mrs Sophie LEUNG said just now, from computer records, it can be seen that Mr SHEK had declared his interests and put down in black and white that he was an INED of the MTRCL. This point is stated very clearly in our Register of Members' Interests.

In addition, I also have some doubts about how declarations of interests should be made. As we all know, I am a man, an architect and an Authorized Person (AP). When speaking at the meetings of the Subcommittee on Building Safety and Related Issues, do I have to declare that I am an AP on each occasion? The reason is that APs can carry out a lot of building works, so of course, pecuniary interests are involved. In that case, how should declarations be made?

In addition, I wish to have a clear understanding of the definition of "pecuniary interest". How is Rule 83A of the RoP worded? It is like this: "..... a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.". In that case, how can it be determined whether the interest involved is "direct pecuniary interest" or "indirect pecuniary interest"?

We all know full well that "direct pecuniary interest" is related to money. As regards "indirect pecuniary interest", if the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL Project) is built in the future and I have the opportunity to take part in its planning, is any interest involved in doing so? I think it is difficult to give "indirect pecuniary interest" a definition.

My understanding is that "indirect pecuniary interest" means that the

interest involved is more remote from the Member concerned. However, if he is fairly distanced from the interest, I think he should not be considered as having any interest.

Let me ask a very stupid question. The Government often stresses that after the commissioning of the Express Rail Link (XRL), the Hong Kong public will stand to benefit the most because it will only take some 10 minutes to reach Futian in Shenzhen. This being so, do all Members of the Legislative Council have to declare this indirect interest? The reason is that in the future, of course, we will take the XRL.

In addition, the report of the Committee on Members' Interests (CMI) explains clearly that since Rule 83A of the RoP does not specify what is meant by "pecuniary interest", therefore, the five principles applicable to Rule 83A of the RoP should be set out in the form of guidelines to highlight the connection between a Member and the company of which he is a director for Members' reference in the future — and I stress "in the future".

Since the CMI considers that Rule 83A of the RoP does not lay down a definition of "pecuniary interest" and I also consider this situation unfair to Members, the CMI has deduced five principles.

If it is on account of Mr SHEK's failure to follow Rule 38 of the RoP — sorry, it should be Rule 83A — to disclose the nature of the relevant interest that a resolution is moved by this Council to admonish Mr Abraham SHEK but the provision does not define what is meant by "pecuniary interest", is doing so being fair?

Most importantly, I know that some Members even have direct pecuniary interest or interest that borders on indirect pecuniary interest, but they have not been admonished. Therefore, I think Mr SHEK should not be admonished on this occasion.

Thank you, President.

**MS LI FUNG-YING** (in Cantonese): President, I am not a Member of the CMI

but I know that after the CMI had investigated a complaint, it proposed that Mr Abraham SHEK be admonished. Although this is the lightest sanction under the RoP, I am still somewhat astonished by this. In the legislature, Mr Abraham SHEK represents the Real Estate Developers Association of Hong Kong, so it can be said that he represents the interests of consortia, whereas I represent the labour sector, which is perhaps the most socially disadvantaged group in society. In terms of interest groups, their positions are poles apart. However, I have known Mr Abraham SHEK in the legislature for more than a decade and in dealing with people and matters, Mr SHEK certainly does not have his benefits as the foremost consideration, as property developers do. When I was handling labour cases that were desperately in need of support, Mr SHEK extended a helping hand on more than one occasion. In particular, in the construction industry, Mr SHEK has also put in his money and efforts and taken the lead in establishing the Construction Charity Fund to assist self-employed workers who were injured in work but could not get any compensation in meeting their pressing needs, and he also helped the family members of workers who died suddenly in work. Therefore, this fund has won a certain degree of recognition in the industry. Therefore, I do not believe Mr SHEK would deliberately hide his capacity in some meetings for the sake of personal interest.

President, the aim of the system of declaration of interests by Legislative Council Members is to ensure that the exercise of all public powers are conducted in broad daylight and under stringent requirements and high transparency, so that no transfer of interest would occur. This requirement and principle must be enforced fully and no compromise is possible. I have no disagreement whatsoever with this. However, as far as I know, Mr SHEK did not omit any interest in his general declaration of interests. Even when he attended the meetings of the Panel on Transport and the Railway Subcommittee, I could often hear him declare his interest as an INED of the MTRCL. The problem occurred in the discussion on a specific item of the meeting. Mr SHEK forgot to declare his interest. Such instances of oversight despite great vigilance also strike a chord in me. In my experience, sometimes, when the Legislative Council discusses certain items, I am also worried that they may directly or indirectly involve my other public offices and capacities and that I am worried about omitting to declare my personal interests.

President, as far as I remember, this time, it was the CMI that carried out an



investigation into the issue of declaration of interest by the Member and proposed the admonishment. In the entire investigation, the most important question was whether or not Mr SHEK, in exercising his public powers, had made any direct or indirect transfer of interest with particular interest groups. Clearly, the report of the CMI did not make any such accusation. Therefore, I also believe that the report has cleared Mr SHEK's name. However, to admonish Mr SHEK for his oversight to declare his interest only reminds us once again that although Members have a lot of duties to attend to, they definitely cannot take the declaration of interest lightly.

President, I so submit.

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

**MR RONNY TONG** (in Cantonese): President, originally, I did not intend to speak but having heard an Honourable colleague talk about justice, I think it is necessary to discuss what is justice.

President, to my understanding, when we talk about justice, there are two kinds of justice, one being substantive justice and the other being procedural justice. Substantive justice means that if someone did something wrong that caused the occurrence of an incident, he should accept the consequences of the incident. In the legislature nowadays, I believe that instances of Members directly violating substantive justice are not that common. However, the biggest problem is that in fact, the RoP have not specified in detail what direct or indirect interests are.

Sometimes, be it in debates or even in the scrutiny of bills, some Honourable colleagues would make what many people consider to be far-fetched speculations. President, for more than once, particularly in the scrutiny of the competition law, I heard many people say, "Ronny TONG, of course, you would support it because you are a barrister, so the passage of this piece of legislation in the future will bring you benefits." President, I have heard this kind of things more than once. Strictly speaking, as a lawyer, in particular, a barrister, the passage of any piece of legislation may give me benefits in the future because all laws may give rise to legal disputes. Some people may also say to me that since

back then, I played a part in scrutinizing a certain bill, so I can perhaps talk about the reasons. President, this is possible. President, concerning pecuniary interest, I think a clear line must be drawn here. How substantive are indirect pecuniary interests?

President, if we only talk about direct and actual interest or the substantial justice involved, is it that we do not have to consider other issues of justice? I do not think so, because often, procedural justice is also important and often, procedural justice is concerned with perceived justice, as in the Courts. When dealing with matters, not only is it necessary to let people feel that justice is done, it is also necessary for justice to be seen to be done. That is to say, when the direct or indirect interests involved can readily be seen and they are rather close at hand instead of being distant, often, we also have to be concerned about the need for procedural justice or perceived justice.

If a Member is the director of a company and this company may benefit on account of a motion or a bill of the legislature, I believe the line should be drawn there. However, it does not necessarily mean that this Member is sewing his own interests and thus has devious or unjust intentions. I believe such matters must be considered carefully and clearly. When we have discussions, we should not assume that the Honourable colleagues have the design or intention of working for their own interests, as Dr Philip WONG pointed out just now. However, if such a requirement is laid down in the RoP, some Honourable colleagues may think that this is redundant. For example, if I have stated clearly that I am a lawyer, do I have to make a declaration of interest each time a piece of legislation is to be passed? I believe there are also justifications for this.

President, I also wish to talk about another point. Just now, I asked Dr Margaret NG a question, saying that the director of a company may not necessarily stand to gain from the benefits gained by his company because often, the director is actually not a shareholder and the people who really stand to gain are the shareholders. Why should the director of a company assume responsibility for the interests of his company? Just now, Dr Margaret NG said to me that this was because such was the common view, that generally speaking, directors were regarded as representing their companies and they were the real entities of their companies.

I believe that on the issues in this regard, it may be necessary for us to

consider the RoP more carefully in the legislature because if someone is an independent director or what is involved is not real benefits (real and actual pecuniary interests) but only some general interests, for example, he only receives a salary and no matter if the company makes a profit or not, he will still receive his salary, is this direct or indirect interest? I think the Committee on the Rules of Procedure may have to discuss this further. However, I think the subject matter today may have just exceeded the issue of procedural justice mentioned by me just now. I hope that Mr Abraham YIP ..... sorry, not Mr Abraham YIP, haha, it should be Mr Abraham SHEK (*Laughter*) Sorry, hahaha ..... Mr Abraham SHEK will understand this point.

Thank you, President.

**MS MIRIAM LAU** (in Cantonese): President, first of all, I have to declare my interest as the Chairman of Subcommittee on Matters Relating to Railways (the Railway Subcommittee).

This resolution is about admonishing Mr Abraham SHEK for failing to disclose his interest as a non-executive director of the MTR Corporation Limited (MTRCL) before speaking at three meetings of the Railway Subcommittee.

Rule 83A of the RoP provides that: "..... a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest."

What I wish to say first of all is that at those three meetings of the Railway Subcommittee, no Member proposed any motion or amendment. The focus of the problem now is: Mr Abraham SHEK spoke in all those three meetings of the Railway Subcommittee and the fact is that he did not disclose his interest as a non-executive director of the MTRCL.

In dealing with the resolution today, we must adopt the most just, reasonable and impartial attitude in examining the whole matter.

I think Mr Abraham SHEK often boasts the fact that he has been a

non-executive director of the MTRCL since 2007. In a number of meetings of the Railway Subcommittee, whenever the MTRCL was mentioned, he would surely declare his interest as a non-executive director of the MTRCL. I notice that many Honourable colleagues would laugh at him because he had declared his interests too many times. Perhaps because he makes declarations frequently but it so happened that at those three meetings of the Railway Subcommittee, he did not do so; he also admitted that it was due to an oversight that he made this mistake.

However, to give the matter its fair deal, on this fact of being a non-executive director of the MTRCL, I really think that Mr SHEK has already made a declaration of interest in writing to this Council and at the meetings of the Panel on Transport (the Panel) or the Railway Subcommittee, and he has also made declarations of interests a number of many times. In the Legislative Council, I believe no Honourable colleague can possibly be unaware of the fact that he is a non-executive director of the MTRCL because he has boasted about this for a long time and made such declaration many times, so it is not possible that any Honourable colleague does not know about this. I also believe that the public probably also know that he is a non-executive director of the MTRCL.

On Rule 83A of the RoP, I think there is one very important consideration, namely, this provision is intended to prevent Honourable colleagues from carrying another "agenda" in their minds: That they have some pecuniary interests outside the legislature and it so happens that the legislature happens to discuss some subject matter related to them, so in order to support this relevant subject matter, they conceal their pecuniary interests outside the legislature, hoping that the general public have no knowledge of this and would think that they are really speaking in public interest.

However, this element does not exist in this incident relating to Mr Abraham SHEK at all. He is not an executive director of the MTRCL, but an "honourary" non-executive director, so he does not play a part in the daily operation of the MTRCL.

Of course, both executive directors and non-executive directors have to assume responsibility. Insofar as the overall governance of the corporation is concerned, it is undisputed that he has to assume responsibility. However, he is

only a non-executive director and ever since he took up this post, in fact, he has never concealed this fact. Although he did not declare his interest at the meetings of the Railway Subcommittee, I do not think that he needs to conceal it and in fact, he did not. Nevertheless, he really violated the Rule because it seems the Rule requires that Members have to declare their interests each and every time before they speak.

In that case, I think that will mean a lot of hassle. I hope the Committee on Members' Interests (CMI) or the Committee of Rules of Procedure (CRoP) can examine if such a requirement is really necessary. As far as I can remember, the rules of the British Parliament is that if Members have declared their interests in writing, even if any subject matter in a meeting is relevant to their interests, his written declaration can be regarded as the basis of having made a declaration. This arrangement can save a lot of trouble.

In view of the relevant requirement in the RoP, and if Mr Abraham SHEK is really considered guilty in this case, in the future, before Honourable colleagues speak in meetings, they have to make declarations diligently. Alternatively, in view of this experience, should we examine if we have to refine the RoP, so that the relevant Rules can serve the aim of making disclosures of interest on the one hand, and facilitate the operation of the legislature without being too cumbersome on the other?

I call on the CRoP and the CMI to look at the experience of the British Parliament. I remember that the British Parliament has perhaps drawn up relevant guidelines and Ms Cyd HO may have looked at the relevant information. I believe the British Parliament has drawn up the relevant guidelines, but I have not done any in-depth study on this of late.

My aim in speaking is mainly to point out that Mr Abraham SHEK did not intend to conceal the fact that he is a non-executive director of the MTRCL. He cannot possibly be successful in doing so because the number of disclosures made by him is far too great, so he did not intend to conceal this.

Concerning the accusations against Mr Abraham SHEK, we have considered them on this basis. Did Mr Abraham SHEK intend to hide anything?

Did he support the item discussed on that day on account of some interest unknown to others? I believe the answer is clearly in the negative.

Apart from the relevant meetings, I have a lot of information to prove that he made declarations on other occasions. However, I do not wish to take up too much of Members' time. If Members look up the records, they will find that he has made declarations. He does not have to conceal anything, nor does he have anything to conceal. In fact, I do not believe he wanted to conceal anything.

Maybe, as some people say, perhaps Mr Abraham SHEK only had an oversight. However, I would rather think that in those three meetings, he had thought of ten thousand things but omitted one because he had made declarations on each of the previous occasions but for some unknown reasons, he forgot to make declarations at those three meetings. I do not know what caused him to have such a slip. He did not violate the Rule deliberately.

No matter if he violated the rule deliberately or not, if the CMI believes that Rule 83A of the RoP should be interpreted as "having to make a declaration on each and every occasion", I believe Mr Abraham SHEK has only made a technical mistake because he really did not make a declaration. Since he did not do so, he has technically violated the Rule. Rule 85 of the RoP states that the lightest sanction is admonishment.

It is undisputable that the CMI considers him to have technically violated the Rule and he also admitted his oversight, so the lightest sanction of admonishment has been meted out to him. However, is admonishment the most appropriate sanction? As regards the question of whether or not Members have to make declarations on each and every occasion, I believe it has never occurred to any Member that declarations have to be made each and every time.

If the Members concerned plan to move a motion or amendment, they surely have to make declarations. If there is any major issue, it is also absolutely necessary to make declarations. I believe Mr Abraham SHEK made the mistake inadvertently and that was why he forgot to make a declaration before the discussion of the Railway Subcommittee. Of course, I am not Mr Abraham SHEK, so I do not know why he did not make a declaration, but I am sure he did

not conceal anything deliberately. In that case, is it really necessary to admonish him?

We can make reference to overseas experience. I have looked up a study conducted by the Legislative Council Secretariat in 2000-2001 on how overseas legislatures sanction Members who have violated the rules. The paper is in English, so I am not going to read it out. If Members are interested, they can browse it on the Internet.

The paper mainly raised two points. Although members of parliaments overseas also violate rules, admonishment is only intended for deliberate concealment or misleading behaviour. Parliaments will admonish the members concerned only in very serious cases.

How do overseas parliaments deal with other not so serious cases? I noted that there are at least two approaches, the first being "formal apology", that is, the member concerned will speak in the legislature to tender an apology, saying that he has violated the rules technically but it is only an inadvertent mistake, so he will say "sorry". This is one of the approaches and it is also apparently the lightest sanction.

Second, the legislature may issue a "letter of reproof", that is, to issue a letter to warn or condemn the member concerned. After the member in question has received the letter, the incident will come to a close. The legislature will not hold any discussion on the incident, nor will it put the incident in the limelight, as in the meeting today, as though Mr Abraham SHEK were put on a public trial. The legislatures overseas do not do so. They would adopt flexible ways to deal with minor violations.

In my view, even if members of parliaments overseas are involved in violations that are even more serious than that of Mr Abraham SHEK, the legislatures would still deal with them with these approaches. Therefore, I have reservation about whether or not it is necessary to adopt the harsher approach of admonishment for such technical violations.

Therefore, I hope the Committee of RoP and the CMI can study if it is necessary to amend the relevant provisions to enable us to deal with possible future violations by Members with greater flexibility instead of having to make

admonishments on each and every occasion, or order the Member concerned to leave the Chamber immediately. I think it seems our provisions lack flexibility.

Anyhow, I believe this mistake made by Mr Abraham SHEK is an inadvertent one, coupled with the fact that he had no intention of concealing anything. Therefore, it is difficult for me to support this resolution on admonishing him. Of course, I will surely keep this experience in mind. As the Chairman of the Railway Subcommittee and the relevant committees, when I encounter such instances in the future, I will surely remind all Members of the need to make declarations. I promise that I will do so.

However, sometimes, as chairpersons, we also fail to remind Members to make declarations of interests. We remind them to do so only when voting has to be carried out on motions. If no voting has to be carried out, in the past, in other committees ..... neither the Legislative Council Secretariat nor the CMI has issued any guidelines, and there are no guidelines stating that Members must make declarations before speaking in meetings.

With this experience, in future, we may have to do more. I hope that this Council can make reference to the United Kingdom or other legislatures and streamline the relevant requirements as far as possible, so that Members can make declarations in the simplest manner.

President, I so submit.

**MR JEFFREY LAM** (in Cantonese): President, before all else, I have to declare my interest because the central figure in this resolution today, Mr Abraham SHEK, is a friend of mine whom I have known for many years and sometimes, he may invite me to a meal and I may invite him to tea. I believe even this may count as having an interest, so I should make a declaration.

The resolution today says that Mr Abraham SHEK has failed to disclose the nature of his possible pecuniary interest in the project to construct the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL Project) by virtue of his being an independent non-executive director of MTR Corporation Limited (MTRCL) at three meetings of the Subcommittee on



Matters Relating to Railways (the Railway Subcommittee) of the Panel on Transport of the Legislative Council contrary to Rule 83A of the RoP.

In fact, in the Legislative Council and in society, even the blind could see and the deaf could hear that he is a director of the MTRCL, could they not? Furthermore, according to the records of the Legislative Council, as early as on 3 January 2008, in the Register of Members' Interests, Mr SHEK already declared to the Legislative Council Secretariat that he was a director of the MTRCL. Both Mr Abraham SHEK and I are members of the Railway Subcommittee of the Panel on Transport. In fact, over the years, having convened so many meetings, we also discussed many matters relating to the MTRCL and I also heard Mr SHEK declare his interest as a director of the MTRCL, for example, when discussing the Kowloon Southern Link in November 2008, the West Island Line in June 2009 and the increase in the fares of the MTRCL, and so on. As someone said, "What is real cannot be made false and what is false cannot be made real". I believe that in the three meetings on the XRL Project mentioned in this resolution, it was only due to fleeting oversight that Mr SHEK forgot to declare his interests and he by no means had the intention of concealing this fact. I also believe that this incident has not done any harm to the public or the Legislative Council.

I agree with the report of the CMI that the public have rising expectation of the conduct and propriety of a Legislative Council Member and this I understand. Members must remain vigilant and comply with the requirements of the RoP on disclosing pecuniary interests, so as to uphold the credibility of the Legislative Council. I understand that in theory, the wider the scope of interests declared by Members, the better and the more detailed the declarations are, the better, that is, it is better to be strict than to be lax. However, sometimes, when I see some of the declarations of interests made by Members, I really feel quite puzzled and even feel that some of them are redundant.

Let me cite several examples. For example, in the meeting on the prohibition against idling vehicles, some Members said that they would drive sometimes; when discussing the rationalization of bus routes, some Members said that they took the bus sometimes; when discussing the services of the MTRCL, some Members said that their homes were located along MTR lines. In making these declarations of interests, do they mean that the fare increase or services may

affect them, thus leading to a conflict of interests? If the answer is in the positive, why did they make the declarations at that time but when voting on the XRL Project, they did not make such declarations of interests? When talking about airport services, a Member said that he had been to the airport to take the plane. Or, just as I said at the beginning of my speech, I declared that I knew Mr Abraham SHEK and that he would invite me to dinner, so can this be considered having pecuniary interests?

I do not know if ordinary members of the public, when hearing Legislative Council Members make such declarations of interest, would think that Members are justified in doing so and that it is necessary for them to make such declarations? Or would they think that Members are being trivial and frivolous and that there is no need to do so. I really do not wish to see the system under the RoP requiring Members to make declarations of interest become excessive, as a result of which the speeches of Members in solemn meetings will be accused by the public as being "senseless" and sometimes, even as a waste of time and public funds. In fact, in the meetings of the panels, the time for Members to speak, together with the time for officials to give responses, is not a lot and it amounts to just several minutes. If declarations of interests have to be made whether they are reasonable or not, I wonder how much time will be left for speeches.

President, I hope the public will understand that Members must defend the public's right to know by all means. Concerning Mr Abraham SHEK's case, since he has put down in black and white in the Register of Members' Interests that he is a director of the MTRCL, he had no intention of concealing this at all, nor do I think that this incident has affected the credibility of the Legislative Council. Therefore, I hope Members can understand his oversight to make verbal declarations of interest at the three meetings. It was only a momentary oversight. I do not support the proposal of this motion to admonish him either. I think that there are many matters in the existing RoP that call for re-examination by us. I think that at present, many people in the legislature do not quite understand what is meant by indirect interests and what is meant by direct interests. Since they do not understand them, we can make reference to some examples outside the legislature or overseas. Although we are Members, we are not experts on everything. It is necessary to review the RoP as well as matters in many other areas.

Therefore, I believe we should all take a more rational attitude in dealing with this incident of admonishment.

President, I repeat that I think this is only an oversight on the part of Mr Abraham SHEK and he had no intention of covering up anything. I do not support this motion on admonishment.

Thank you, President.

**DR MARGARET NG** (in Cantonese): President, in rising to speak, I really find this most regrettable because I do not want to have a debate on a motion to sanction a Member. If we agree that a Member who has violated the rules should deserve appropriate sanction, we should cast a vote in favour and if we do not agree, we should cast an opposing vote. When we rise to speak in a debate, we will discuss in depth how the behaviour of the Member violated the rules and in fact, doing so is very disrespectful to the Member concerned. Unfortunately, this debate makes me realize that Members do not accept such a culture.

President, a clear account of the whole background can be found in the report of the CMI. As regards matters of principle, the CMI also spelt out in chapter 3 matters relating to the procedures and rules on pecuniary interest that had been considered and Members can discuss the matters in this regard when debating another motion. I think the principles should be debated. The CMI made its decision according to the principles and ideas that it had considered in the course of its investigation. If the CMI made a wrong decision, of course, it has to assume responsibility. If Members think that the CMI has done anything wrong, they can debate this in detail later.

Since the CMI has discussed the behaviour of this Member a number of times, we really should not discuss the same issues again in this session. President, what transpired ran counter to our wish. Since the public may not have read this report, to avoid arousing any doubt among the public, I wish to give a brief explanation here.

The CMI spent a lot of time on discussions. The first issue that we considered was: Did this Member actually violate any rule? Did he violate Rule 83A? The Rule provides that: "In the Council or in any committee or

subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.". Since the Rule provides that disclosures of interests have to be made in meetings, we looked at the facts to see if the Member concerned had declared his interests in the meetings. The result is that the Member concerned did not do so in the meetings. This is the part relating to the rule.

Another issue considered by the CMI was whether or not there was any pecuniary interest, direct or indirect. What we spent the most time discussing was indirect pecuniary interest. President, here, let me read out paragraph 3.4 of the report: "CMI takes the view that for a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. As regards 'indirect pecuniary interest', CMI is of the view that it is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider that such interest might have certain influence on the action or speech of the Member.". This Member does not have any direct and immediate pecuniary interest. We have examined the rules of the legislatures in many regions. The result is that if you are the director of a certain company and the company has a pecuniary interest in a certain matter, you should be regarded as having an indirect interest in a certain matter.

The CMI also considered the question of whether or not there is any difference between executive directors and non-executive directors. Members can look at paragraph 3.5 of the report. I now quote it, "CMI notes that there is no distinction between executive and non-executive directors in law. CMI also notes that all the directors of a company owe a fiduciary duty to their company. This means that they must at all times act honestly and diligently, showing the company their highest loyalty ....." The only conclusion that the CMI can draw is that in deciding whether or not a certain Member has any direct or indirect pecuniary interest as specified by Rule 83A, whether the Member concerned serves as a non-executive director or an executive director does not make any difference.

The conclusion that we drew after considering all the facts was that this Member had indeed violated Rule 83A. In this regard, the Member concerned did not voice any disagreement at all, nor did he point out any inconsistency

between what we said and the facts. Concerning the understanding of direct and indirect pecuniary interests, he may hold different views but in fact, we did not have any disagreement.

Another issue considered by the CMI was the circumstances of the violation of the Rule by this Member. Did he violate it intentionally or inadvertently? When we consider the sanctions, whether the violation was deliberate or inadvertent makes a great deal of difference.

Members will learn from the report that the CMI took the unanimous view that the Member concerned had not violated the Rule deliberately. We can look at paragraph 4.24. We believe Mr SHEK's breach of the Rule was due to an oversight and he had no intention of hiding his personal interest as an INED of the MTRCL. I think this conclusion is very clear and beyond any doubt because the Member concerned had made declarations in writing and on other occasions, so had he intended to cover up anything, he would not have made the declaration on other occasions. Therefore, our conclusion on whether or not he had deliberately violated the Rule is very clear. It was definitely due to an inadvertent mistake that he did not declare his interest and it was due to an oversight that he did not declare his interest.

We have considered whether or not, since Mr Abraham SHEK's violation of the Rule was inadvertent, he should be sanctioned. The CMI did not make the decision based solely on the personal character of Mr Abraham SHEK, rather, it made the decision according to past approaches in handling similar issues. After discussing and studying past approaches, the conclusion we drew was that a recommendation should be made to this Council to impose the lightest sanction. President, the foregoing can be found in the report and we did not decide the approach in handling this matter based on our subjective impressions.

President, I think it is not advisable to have a debate in this session, but to avoid causing any misunderstanding among the public, I think an explanation should be made here. President, when the CMI had discussions, it also believed that the present Rules must be followed in handling this matter. We cannot say that Rule 83A is not reasonable, so we will consider this matter according to what we consider to be reasonable. We also considered whether or not the existing procedures are the best way of monitoring and investigating Members' interests. We think the existing procedures are not ideal, so we hope that in the debate on

the next motion, the application of current Rules, what procedures should be adopted to monitor Members' interests and whether or not the regulatory procedure of the Legislative Council are already outdated can be discussed. According to my understanding, the CMI hopes very much to listen to other Members' views but in respect of the application of rules, we can only follow the existing Rules in discharging our duties. My explanation ends here. Thank you.

**MR ALBERT HO** (in Cantonese): President, as I expect some divergence would arise when Members vote on this motion today, so I would talk briefly on the arguments and position of the Democratic Party in support of our voting decision we make.

As Members know, the CMI is a standing mechanism in the Legislative Council, and as Members agree, the CMI would be composed of Members from as many political parties and groupings as possible. And we hope that various political parties and groupings will take part in the work of the CMI. The aim of the CMI is to ensure that the Legislative Council as an institution can function in a fair and just manner. It will have transparency while any conflict of interest is to be avoided. If there are any problems about interests, Members should uphold and defend the institution by disclosure of interest and abstaining from casting votes as when appropriate.

In general, if there is a complaint and the CMI needs to conduct an investigation, Members would respect the work to be done by the CMI and try their best to co-operate with the CMI investigation. According to past practice and convention, after the CMI has made a decision and compiled a report, it will submit the report to the Legislative Council. Unless there are some strong grounds, Members would respect and accept the conclusion drawn by the CMI after its investigation into the matter. By strong grounds they would mean that Members have doubts about certain actions taken by the CMI and which Members regard as not correct, such as when the CMI has not acted fairly in dealing with the evidence or when Members think that certain principles held by the CMI are wrong, such as when the CMI misconstrues the meaning of certain provisions in the RoP.

Coming back to the subject under discussion today, I would try by all means not to repeat the points already raised by other Honourable colleagues. They have talked about a lot of things which I agree very much. First, I think that the Member concerned should have declared his interest and that includes any direct and indirect interest. In view of the fact that the matter is about whether or not the XRL should be constructed, and if the project can proceed, the MTRCL will be the largest stakeholder, the Member as a director of the MTRCL should declare his interest and that applies even when the interest he holds is indirect in nature.

The point is whether or not the Member intended to hide anything, or it was only out of sheer inadvertence that he did not declare his interest, and so would that constitute a contravention of Rule 83A? The requirement under Rule 83A is simple enough and, that is, Members shall disclose the nature of their interest and how they are related to the item under discussion. It will be a contravention of the Rule if they do not declare their interest. The Rule does not stipulate that any deliberate attempt to hide will constitute a breach of that Rule. Therefore, I agree with what Honourable colleagues have said earlier, that we all know that Mr Abraham SHEK is a director of the MTRCL and that he does not have any motive whatsoever to cover up. I would think that it is only an oversight on his part and that cannot be disputed. Even so, he has technically contravened Rule 83A. I think it is out of the consideration that I have just mentioned that the CMI has arrived at the conclusion that the Member concerned has contravened that Rule.

The last thing to consider is how punishment should be meted out. The CMI has chosen the lightest sanction. In the past, if a Member had contravened that provision, punishment would be meted out to that Member and the violation would not be taken lightly if that Member in question had acted in inadvertence. The lightest sanction would be admonishment by the CMI as recommended in the case now. We understand perfectly how that conclusion was drawn. We all know that Mr Abraham SHEK has technically violated that provision and even if so, it has nothing to do with his integrity. He does not have the motive to hide anything and we all know that he is a director of the MTRCL.

Ms Miriam LAU has just cited some overseas examples and they really merit our consideration. There is a need for us to consider whether or not the

RoP should be amended in future to provide for some simpler ways of handling similar matters, such as offering an apology or giving a reminder in the form of a letter, or using words like "regret", and so on. We know clearly that the matter in question does not involve integrity and even though Mr SHEK has not declared his interest in a number of related matters, he has done so on other occasions and so the incident can be regarded as very mild in nature.

After considering the provisions in the RoP and the convention to give due respect to the findings and conclusion drawn by the CMI in the absence of any strong reason to oppose, the Democratic Party decided to vote in support of the conclusion so reached by the CMI. I believe Mr SHEK would understand our decision and even if this motion is passed, I hope that he would not feel too upset about it. I believe the decision made by other Members would also be based on the considerations I have just mentioned.

**MR ALBERT CHAN** (in Cantonese): President, I think that the case in question which results in an admonishment as a result of a conflict or contradiction in interest has offered a very good opportunity for the public to know how ridiculous or absurd the monitoring system of this Council on Members' interests is.

First of all, I wish to make an explanation. Perhaps many Members of this Council or members of the public do not quite understand the spirit behind the appointment of Members of this Council as non-executive directors of certain statutory bodies. I am not in business, nor do I know many directors of listed companies or big corporations. I have never been a director myself. I know that quite a number of Members are appointed into the board of directors of many giant consortia, big developers or other board of directors of agencies of these real estate hegemonies by virtue of their special status. They may get a director's fee to the tune of some tens of thousands dollars a month. This kind of appointment is purely done because of political influence or political position. These big consortia will make full use of the political position of these Members and they will use money to obtain their loyalty or buy certain of their relations or knowledge. As a result, these Members will reap a hefty return.



But there are also many statutory bodies which will appoint Members of this Council to their board of directors, such as the Mass Transit Railway Corporation before its listing, the Urban Renewal Authority or the Airport Authority. In these circumstances, when Members are appointed in their capacity as Members of the Legislative Council, it is not meant to provide opportunities of making money to these Members as monetary reward is not the primary reason for the appointment of these Members. When the big consortia appoint Members to their board of directors and when Members are glad to accept such appointments, this is mostly because of money. Members will not join a company's board of directors for some lofty reasons. They join these big consortia purely for money. They may only need to attend a meeting every month and get tens of thousands of dollars in reward. Of course, these Members may have to barter their soul and conscience. And certainly there are people who claim that they are appointed because of their expertise or ability, but we all know very well that the reason is nothing other than their political position.

When someone becomes a director of a statutory body, the reward he gets is of course fame and position. For if not, Mr Abraham SHEK would not have been a non-executive director of the MTRCL for so many years. Of course, it is also due to his long-standing relationship with railways as he has been engaged in railroad work ever since the times of the Kowloon-Canton Railway Corporation. Or it may be due to his great interest in railways. But it must be said that he has become a director of the MTRCL for more than six years as a result of his using all kinds of influence or relationship. The six-year rule which the Government has imposed may not apply to a board of directors in a company like this. But if we consider this against the six-year rule for advisory bodies, the term of office for Mr Abraham SHEK has far exceeded that duration.

The aim of joining statutory bodies in the capacity of a Member of this Council is to join that organization as a representative of public opinion and to monitor the operation of these statutory bodies in order to uphold public interest. If Mr Abraham SHEK is to be rebuked, then he should be rebuked or reprimanded for his failure to represent the grassroots or exercising any effective monitoring of the railway corporation on behalf of the people, as a result of which the corporation still wants to raise the fares after reaping a profit of \$12 billion. I would focus more on this aspect if he is to be rebuked. I would also question why the corporation wants to use \$69.9 billion to build an express rail. I would condemn him for this. I would not just rebuke him but also denounce him.

Even if I am a good friend of Mr Abraham SHEK, I would still say so. So if we want to rebuke him, we have to look at the matter from another perspective.

The case in question is purely a matter of procedure. And as a number of Members have mentioned this point, I would not repeat it. Actually, everybody knows that he is a director of the MTRCL and perhaps later on when he attends a meeting of this Council, he should wear a T-shirt, like what we from the People Power do, with words printed on it declaring that he is a director of the MTRCL.

With respect to the question of interest, insofar as the entire incident is concerned, I do not think there is any pecuniary or financial gain involved. But as we look around in this Chamber, I would think that Mr Abraham SHEK is more of a victim in this incident than not. There are so many people here in this Chamber and they may use all sorts of relations for financial gains. And they do not have to make any declaration. They may use their position to do something or make money in secret and nobody will ever know. There is no requirement in the system to ask them to make declarations. Unless the ICAC has found out that they have certain special relations or there are any blunders in terms of procedure, then it is lawful to make money by using these relations. It does not matter if it is collusion with the Government, with the business sector, or between Members and the Government, everything is considered lawful. Many Members are prepared to come to the defence of the Government, so what are they after? It is those medals and honours, or positions in those committees and advisory bodies, or certain special favours extended to their political parties. But it is absurd to see that no rebuke has ever been made in this Chamber of this kind of collusion, transfer of interest or acts betraying the conscience. It is ridiculous. So with respect to this case of Mr Abraham SHEK, I think it will serve to make the people of Hong Kong realize that the political system of this Council is so unusual and ridiculous. Matters which do not involve any personal pecuniary interest at all will lead to admonishment, but nothing is done about people making millions of dollars or tens of million dollars in the dark in money terms or financial gains while public interest may be undermined as a result of this.

So, President, there is definitely a need to review this system. If it is to be reviewed, and as I have put forward the idea for years, it should be conducted by drawing reference to the overseas parliamentary assemblies. Once Members

have assumed this office, they shall not be the directors of any company. And on top of that, they shall not be in business. They should use trustees and appoint certain professionals as their representatives and manage their personal assets and companies. This is because they cannot prevent any suspicion from being aroused due to a decision they make. This rule shall apply even if the decision concerned may not bring them any direct interest, just as in the case of the younger brother of Donald TSANG working for a certain consortium. But since that consortium has a business in ferry service, so the Chief Executive has allocated a funding of some \$100 million to finance the ferry business. This is a blatant and unabashed transfer of interest.

If this Chamber or Council can leave an impression with the public that its Members are working wholeheartedly for the public and they will uphold the interest of the people, then Members shall not carry on their own businesses or have any interests because once the issue of personal interest is involved, all the decisions they make will be subject to restraint. These real estate hegemonies are ruthless and no matter if we run a factory, shop or in the retail or construction business and no matter when it comes to any occasion or relationship, we are bound to have dealings with one or two of these real estate hegemonies. And our business will be affected by any good or bad results that a policy may bring. In such a small place as Hong Kong, these real estate hegemonies hold a tight rein on every trade and sector and their intricate networks of relations have tentacles extended to every walk of life. No wonder many Members from the business sector have never said anything negative against these real estate hegemonies in this Council. They have never done so. The people of Hong Kong have all along condemned the cruel and ruthless acts of these real estate hegemonies, but certain political parties and Members from certain functional constituencies have never uttered a single word against the unjust and unfair acts of these real estate hegemonies. So, President, I am very sympathetic to the result that Mr Abraham SHEK is to be rebuked and admonished.

As I said just now, the incident this time around can serve to demonstrate the absurdity of the system. I call on the Legislative Council as a whole to conduct a full review and devise a more stringent system, especially by requiring that all Members should use trustees so that they will not have the smallest opportunity to seek personal gains by using their political relations and betray their conscience, the interests of the public and the rights of the people.

**MR IP KWOK-HIM** (in Cantonese): President, on behalf of the DAB I speak on this resolution.

Honourable colleagues of this Council are called "Honourable" for the reason that people hold Members in respect. But since Members are ordinary people, to err is only human. However, if we are to decide whether or not a mistake made by a Member should warrant sanction, the premise is whether or not the Member in question knows well the yardstick used in imposing sanction and whether or not the Member has wilfully contravened the rule.

President, I have read the entire report made by the CMI and noted that Mr Abraham SHEK in his capacity as a director of the MTRCL has contravened Rule 83A of the RoP. The CMI has considered the facts of the case in a detailed, comprehensive and serious manner and the facts known are: Mr Abraham SHEK has recorded in the Register on Members' Interests his personal interest that he is an INED of the MTRCL and during the previous meetings of the Panel on Transport and the Railway Subcommittee or meetings held on other matters, and irrespective of whether he might be simply showing off as Ms Miriam LAU has said or as Mr Albert CHAN has suggested that he should wear a T-shirt to demonstrate this fact, he has on numerous occasions declared that he is an INED of the MTRCL.

In the report it is the consensus view that this contravention made by Mr Abraham SHEK was due to his oversight and there was no intention to cover up the item of his personal interest as an INED of the MTRCL. Hence the CMI suggests that Mr SHEK should be admonished pursuant to Rule 85 of the RoP. This sanction is the lightest in the RoP. With respect to this matter, I have heard views from many Members, including Mr WONG Yung-kan from the DAB who is a member of the CMI.

President, since the CMI has considered the fact that Mr SHEK has recorded in the Register on Members' Interests that he is an INED of the MTRCL, and he has declared that he is holding such an office in the previous meetings of the Panel on Transport and the Railway Subcommittee regarding the issues concerned, this is clear enough. So as I have heard from the speeches made by

many Members earlier, the contravention concerned is only of a technical nature and it is not done wilfully. So in the view of the DAB, this contravention is of a very mild nature. Even if the complaint is substantiated, what would be the first thing to consider? It is whether or not appropriate punishment should be meted out as suggested in the report, instead of trying to settle the matter as in the present case by meting out the mildest punishment after it has been decided that sanction should be imposed. The DAB thinks that if a reminder or admonishment can be issued, or as a number of Members have said earlier that overseas experience should be taken as reference, I would think that this would be an appropriate form of sanction.

In addition, in a paper issued on the fourth meeting held by the CMI on 16 December 2009 on the disclosure of pecuniary interest related to Rule 83A of the RoP, it is said and I quote: "The main purpose of such disclosure is to ensure that other Members and the public are made aware, when a Member is participating in the proceedings of the Council or its committees, of any pecuniary interest which might reasonably be thought to be relevant to those proceedings." The DAB concurs with this view. We consider that Members have the obligation to disclose any direct or indirect pecuniary interest that they have in the proceedings in which they participate. This will enable people from both inside and outside the Council to judge whether or not the views expressed by these Members are under the influence of their personal interest. I would think that the spirit behind that requirement is clear enough.

I have also read the entire report and found that paragraph 3.8 in page 17 contains a similar statement by the CMI and I would now quote it for Members' information. Paragraph 3.8 points out: "The Committee on Members' Interests notes that the disclosure of the nature of the direct or indirect pecuniary interest in the matter before a committee is a condition to a Member's speaking on the matter. Based on the principle that it is a Member's responsibility to disclose his pecuniary interest in a matter being considered to enable other people to judge if his views on the matter have been influenced by his interest, a Member should disclose his pecuniary interest at the beginning of his speech on the matter.". This is a clear point of view on the relevant issue found in the report.

I agree very much with the contents found in the early parts of the report. The purpose of a declaration of interest is to enable people from both within and

outside the Council to judge whether the Members' views on a matter have been influenced by their interest, or if any personal interest is involved because they are a company director or a non-executive director. This is a point which I agree. It is also in agreement with Rule 83A. As I think Members know Rule 83A very clearly, I do not think I need to speak on it in detail.

However, I would think that there is some problem with the latter part of the report. If we are to act according to what is said in the conclusion, that is, based on this principle, Members should disclose their interest before they begin to speak in a meeting, and I would also agree to the remarks made by some Honourable colleagues earlier as well, I would think that Members belonging to the CMI should discuss and look into that to see whether the wording of Rule 83A can be made more specific. Rule 83A says "or speak on any such matter, except where he discloses the nature of that interest". This is because the Rule is written in a way to prescribe what a Member should do, that is to say, if he wants to do something, then he should take some corresponding action. Perhaps when Rule 83 or other related guidelines are to be amended, it should be clearly spelt out that Members must make a declaration on that. I think this can prevent Members from omitting that point in the proceedings. Of course, some Members have asked whether or not all Members should say such things before the beginning of every speech. It is something as obvious as if someone says that he is a man or she is a woman. So some Members may hold this view. But this may not be the best arrangement either.

President, the DAB thinks that as the CMI is satisfied that Mr Abraham SHEK did not make the disclosure of interest only as a result of oversight on his part and there is no intention on his part to conceal the fact that he is an INED of the MTRCL, and this being the case, the decision made by the CMI is not an appropriate punishment. Hence the DAB will not support the resolution that Mr SHEK be admonished. Thank you, President.

**DR RAYMOND HO** (in Cantonese): President, I wish to express my personal views on the Report of the CMI on its consideration of a complaint against Mr Abraham SHEK pursuant to Rule 73(1)(e) and submitted to this Council on 22 June 2011, as well as the decision made in the Report to issue an admonishment to Mr SHEK.

President, I have to declare first that Mr Abraham SHEK is a member of the Professional Forum and I have known him for decades. I have learnt a lot from him because on many occasions he has made some pithy remarks and we are all glad to hear them. Do I have to declare that as well?

President, in the previous item on the Agenda before a vote was cast on the University of Hong Kong (Amendment) Bill 2010, I declared that I am a graduate of the HKU and a honorary fellow of that University. I am also a visiting professor at the HKU SPACE. When I declared the first part of that, I noticed some Honourable colleagues smile, showing that there was no need for me to declare that. Such impressions are in fact very subjective.

But when I read the Report, I find that it is said therein that Mr SHEK did not have the intention to cover up his position in the MTRCL and it is also said very clearly that it was out of inadvertence that he omitted to make a declaration. He has made declarations on that on many other previous occasions, but not on that particular occasion. At that time, both Mr Jeffrey LAM and I did not take part in the voting procedure. It is because of this oversight that Mr SHEK is getting the admonishment. Just now some Honourable colleagues have said that it is the lightest sanction. But I would think that in the perception of the public, would that be the mildest form of punishment? I do not think so.

In the eyes of the public, an admonishment issued to a Member is in fact a very severe sanction. It is an excessive means of handling the matter in question. Although the part of the conclusion reached by the CMI in consideration of the complaint against me is not substantiated, I still hope that the President can allow me to cite as an example the complaint made against me in the same item of the same Resolution. This will enable me to express my view on the Resolution easier and to talk about a field in which I am not at all well versed, namely, law.

First of all, on the investigation conducted by the CMI, that is, it also includes the matter concerning whether or not I had disclosed my pecuniary interest in the XRL Project in the meetings of the Railway Subcommittee held from September to November 2009, I am strongly dissatisfied with the manner in which the CMI has handled the matter. This is because the CMI is in serious

breach of two principles, that is, the principle of due process and the principle of natural justice.

The CMI received on 28 December 2009 a letter from the Slow Movement Hong Kong and the People's Planning Action together with two issues of the *Hong Kong Economic Times*, accusing me of not disclosing my interest before speaking on the XRL Project in the meetings of the Railway Subcommittee held from September to November 2009. The complainants only relied on media reports to lodge their complaint against me.

First, I wish to talk about the point that this is in breach of the principle of due process. According to *The Procedure of the Committee on Members' Interests for Handling Complaints Received in Relation to the Registration or Declaration of Members' Interests or Members' Claims for Reimbursement of Operating Expenses* (The Procedure), specifically paragraph (7) (ii) of the section "Preliminary Consideration", the information concerned should not include media reports, information provided by anonymous persons and speculations, inferences or judgments made by individuals.

In my letter of reply dated 25 January 2010, I pointed out that the two reports in question were media reports and they did not belong to the information required in paragraph (7) (ii) of the section on "Preliminary Consideration". So the CMI should remove these reports from the complaint. The complaint in question is not substantiated because there is no other information in support of the complaint. Hence no further action should be taken to investigate into the complaint.

But, unfortunately, the CMI in its Report has not handled my argument that the attachments concerned did not comply with the complaint procedure as specified under paragraph (7) (ii) of the section on "Preliminary Consideration". On the contrary, the CMI accepted the complaint which is based on media reports and took action to gather information concerning the complaint. This kind of approach is in complete contravention of the complaint procedure found in paragraph (7) (ii). In other words, although the conclusion reached in the Report of the CMI considers that the complaint lodged against me is not substantiated, I wish to express my strong dissatisfaction with the CMI for its contravention of the complaint procedure.



Now I wish to talk about the issue of natural justice. Subsequently, I wrote a letter to the CMI on 2 June 2011 demanding that in its Report the CMI should deal with the issue of whether the CMI would accept complaints based on media reports, if so, whether it was in breach of the information on complaint procedure as set out in paragraph (7) (ii) of the section on "Preliminary Consideration".

I reckon that the CMI might have received other written complaints and I have never been informed of such complaints. In other words, if this is the case, the CMI has also considered other written complaints than that particular complaint. But no one knows about it. This is a far more serious matter and it is a breach of the principle of natural justice. All the actions taken by the Legislative Council and its committees must be fair, just and open. Much to my regrets, it is likely that the CMI has covered up certain information considered by it. This renders it impossible to abide by the principle of being fair, just and open. This is acting against the expectation of the people. So it can be said that the Report is lacking in credibility.

As for the intention to conceal personal interest, ever since I became an independent non-executive director of that company on 1 June 2005, I have made declaration to the Legislative Council Secretariat according to the requirements. The relevant information is also found in the Register on Members' Interests and it is also uploaded onto the website of the Legislative Council for inspection by the public.

**PRESIDENT** (in Cantonese): Dr HO, what is the relevance of the contents of your speech to this Resolution?

**DR RAYMOND HO** (in Cantonese): I know, but I think I can only reach my conclusion by referring to the arguments presented in these remarks.

Some Members have mentioned earlier the issue of the interest of independent non-executive directors. With respect to indirect interest, as a matter of fact, these independent non-executive directors will not know if the company concerned will bid in a tender exercise if the contractor in question is changed; or in the case of Mr Abraham SHEK, he will not know the actual

operations of the MTRCL, nor its action in that particular project. He would not know the details because he is not an executive director.

I hope that when discussing the roles played by independent non-executive directors and executive directors, we should also discuss the issue of direct and indirect interest and consider and review our procedures carefully and see if they are proper and reasonable, and whether they can meet the principle of not leading to a waste of Members' time and the money of taxpayers. So if Members are required to declare their interest in every matter, do I need to make a declaration at every meeting of the Public Works Subcommittee for which I am the Chairman? I am sure Members should consider whether they have to act in such a meticulous manner and comply with the RoP in every single small procedure. I hope there can be time to discuss this issue in detail.

Thank you, President.

**DR PHILIP WONG** (in Cantonese): I respect very much the ruling made by the President on the point of order raised by me. I am also very grateful to you because I have mistakenly referred to Rule 41(5) of the RoP as Rule 14(5). However, after listening to the views expressed by many Members on this motion, I feel that I have something to say. I think that it is an appropriate time to undertake a review, that is, the CRoP should study the issue of in the event when a Member speaks, if it is known clearly that the contents of his or her speech will not touch on any interest, would failing to make a declaration constitute a breach of the RoP? I think it is the right time we reviewed this. Thank you, President.

**MS EMILY LAU** (in Cantonese): President, I speak in support of the motion moved by Mrs Sophie LEUNG.

President, I have been a member of the CMI for many years. The incident before us now is nothing new. At that time when Ms Miriam LAU was the chairperson, she had made some suggestions on monitoring Members. It seems that at that time Ms Miriam LAU had not cried. It was because at that time everybody was lending their support to the suggestions. But today in this Chamber, people have become enemies. It is a most sensitive issue to monitor

Members' personal interests. It is also an issue of enormous concern to the public. So as Members have said earlier, the objective of establishing this CMI is very clear, namely, to allow representatives from every political party and grouping in this Council to form this CMI. President, we from the democratic camp belongs to a minority in the CMI because although we have the support of most voters, we are a minority in this Council. This is the reality which Mrs Sophie LEUNG has talked about, but this is also something we have to accept.

President, the recommendations made in this Report also transcend political parties and groupings. For if not, it would be like what was done in the past, that two reports had to be submitted. That is to say, a report from the minority would be included. If the recommendations made are commonly agreed by political parties and groupings, then Members would accept them. But it turns out that there are still some political parties which do not accept them. They say that the Member in question does not represent them. But in any case, I believe the people are watching this and they want to see how we respect this system of making declarations. Actually, President, this dispute about declaration of interest started last year as a result of the complaints received related to the XRL Project. At that time, many Members had worries and our Legal Adviser and the Secretariat had issued many documents to help Members. We also reminded Members in many meetings that if they had any problems or difficulties, the Legal Adviser from the Secretariat would attend the meetings and provide assistance. However, it is the Members themselves who know at the end of the day what declarations they should make.

President, some Members have said that the Secretariat has never issued any guidelines to specify that they should make a declaration every time. I do not accept that idea. The rules require that declarations should be made and do you think we should really ..... Just now Members have said that the rules are written in great detail, do they think that the rules should be revised to specify that a declaration should be made every time? The rules are clear enough, but they want to have it written that this should be done every time. Members may want an amendment. But a consensus should be reached before any amendment can be made. President, and there is also a requirement for voting in groups. If Members can reach a consensus ..... but now Members want to do it and even if there is a consensus later in the CMI, the proposal may not pass through the

Council. However, there are rules on this. President, we are the legislature and the RoP is law. If we say we do not have to follow ..... well, that does not matter, you can do so if you want to give this message to the community. The question is, as every Honourable colleague says, and we all know, that Mr SHEK did not do it on purpose. We all take this point. But he really had oversight. He admitted that himself. He was in breach of the rules because although he had registered, he did not disclose his interest before making a speech in a meeting. President, some people say that he is a good fellow and he has helped many people. But this is not what is written in the RoP. The RoP does not say that if a Member is a nice person, he may disclose less information. This is not what is written in Rule 83A. So what are the Members talking about?

So the question is that some Members do not like the way in which the provision is written. Very often there are some laws which we do not like, but we have to obey them. The RoP of the Legislative Council is formulated by ourselves. President, if there is anything we are unhappy about it, we can propose an amendment. However, for so many years, I have never heard anyone say that it should be amended, even after the XRL Project case last year and after the Secretariat has issued a countless number of documents, no one has ever proposed that it should be amended. However, we received a complaint from the public. Some Members have read it out earlier. The citizens said that when these meetings were held, there were people who did not disclose their conflicts of interest. Some Members have said earlier that everybody knows about his conflict of interest. But the question is, some people may have known about it but they still think that this should be disclosed. Moreover, there are many people in society who may know nothing about it. President, this is the reason why we have formulated these rules. The case could well be that you may not have acted on purpose, but you have admitted that you have an omission. We accept that it is an omission and we have not found any conflict of interest. But is there any conflict of interest involved in this case? There is. It is because his company ..... Last time about the report concerning Mr LAU Wong-fat, we expressed no disagreement. This is because no conflict of interest is involved. But there is a conflict this time. His company has indeed taken so much money. Then what is meant by direct or indirect pecuniary interest? Actually, the Secretariat has indeed issued many papers on that. There may not be a common agreement among all Members, but I would still think that we have

a clear understanding and that is because Members will declare their interest on many occasions.

Some Members have asked earlier whether they should declare that they drive a car or ride on a bus, and would that be a waste of time if it is required. This kind of declaration can really be regarded as a waste of time. President, this is because people are not saying that you should declare this kind of interest. They are asking you if there is any pecuniary interest involved. You may say that when you pay \$10 to ride a bus, this is already a kind of pecuniary interest. But we all know that this is not the case. The reason is, as we have said many times, if you are a director of a company or a director who receives any remuneration ..... in the case of Mr Abraham SHEK, that is \$300,000 a year. So he has to declare. I really do not understand why a Member has said that it is wrong, while another Member will say ..... And there is also Dr Raymond HO. He has said that the CMI has been in breach of the rules in handling that matter. Mr Paul CHAN is in attendance now. We have been acting in a very careful manner and had it not been that, we would not have to hold meetings for one whole year. On each of these meetings, the Secretary General and the Legal Adviser were there, and so were everyone. If it was just media reports or some anonymous letters, we would not have handled the complaint. But the complainant had given his real name and he had raised these questions and so we took action to look into them. President, after the investigation, we considered that Dr Raymond HO had not done anything wrong. This is because when he attended those meetings, those issues of interest had not arisen yet. And they did not vote on the questions.

So if this Member attacks the CMI in this manner, then we will have to ask some very fundamental questions. First, have the Members of the CMI been in dereliction of their duties and has the CMI done anything wrong? Honestly, the Report has been issued for many days and everyone should have read it. Therefore, if there is any dereliction of duty, or if the CMI has done anything wrong, then the Member should have said it a long time ago. Having said that, it is not too late to raise the issue for discussion now. But may I ask, which paragraph or which sentence in the Report shows that the CMI has been in dereliction of its duty? If we have handled this incident in a fair manner, but still we are attacked in this way and when the prestige of the CMI is the subject of such an attack — President, just now the Member even said that the CMI does not have any credibility — then we may have to, first, resign; and second dissolve the

CMI. But we think the Legislative Council should continue to have such a committee which is found in many national assemblies. And the way we handle matters in a fair manner and with credibility can be seen by everyone. The Secretariat has all along also offered its independent and professional advice to us. Although we may come from different political parties and groupings, we have held so many meetings and we have discussed the issues involved very carefully. We talked about even individual words. There are Members who have moved amendments to certain words. I think you have all seen them. However, we all agree in general on the recommendations. This is because we think that under these circumstances, it is obvious that he was in breach of the rules and a conflict of interest was involved. Then why can we not raise this point up? Some Members have said that the wording is too severe. But that sort of wording has been in use all along. President, during our discussions, some Member had really suggested using the word "warn", and so on. But such kind of wording is not available for use. We cannot invent some words and use them. Some Member suggested that we could draw reference to overseas examples. But I would think that we have to leave this for a later time. Now if I were the chairman of the CMI and if the chairman has to preside over that meeting and when I see the hard work of the Secretariat, that it has to present so many papers for so many meetings, and after hearing views from all quarters, including professional views, and after we have come up with a report which is so clear after discussions, but what we get in return is an accusation that we have not been professional, lacking in credibility, and that the Member in question should not have been sanctioned, then what would you think?

Actually, everyone is saying that there is something wrong, instead of there is nothing wrong. There are problems. But some Member thinks that it is unnecessary because he has never seen those guidelines and the rules are not clear. So there is no need to do that. But this is what is written in the rules, our statute book. President, now the question is, we have compiled our own rules but someone is saying that we might as well throw them away because we have got another set of rules. Some people think that the sanction should be milder and no action should be taken, and so on. They even say that you people are useless, having made this report for no reason, and that it should not be done. Your motion should be negatived. But what if it is really negatived? What kind of message will that give to society? President, an overwhelming majority of the people in Hong Kong are literate and they know how to read that report and

they will know when they hear who wants to attack us and why he should do so. The people will even read the report to find out if any proof is listed there. The motion may be negatived but in our opinion, it is better if it is negatived. From another perspective, this can make the people see clearer. They can see why those people want to vote down this motion. It is true that Members do not have to make a declaration when they ride a taxi or a bus, but if they are remunerated directors and if they are involved in any direct or indirect pecuniary interest, then why should they not make a declaration? Why should they not declare every time when they speak?

President, you have noticed the way I chaired the meetings of the Finance Committee lately. The Secretariat has been giving me great help. Every time when I called a meeting, the Secretariat staff would ask me to read out the requirements in the declaration of personal interests. This may be due to the fact that some Members say that I have not issued any guidelines asking them to make a declaration every time. Does someone remind you every day that you should have a meal? This statute book of ours does not stipulate that guidelines have to be issued every time, but once the rules are there, then they should be obeyed. President, the people of Hong Kong know that although there is no democracy in Hong Kong, they are very concerned about conflicts of interest. I think you will notice that whenever there is any news report on conflicts of interest, the attention of the people will be focused on it. The people will ask, "What has gone wrong? Are any people using their positions to advance their private gains? Have any people done something that should not be done?" This is why we have made these rules. It is as simple as that. All that is required is to raise your hand and say you have got a company. But it turns out that there are people who think that it bothers them too much. Is a requirement like that too demanding? Well, President, I cannot take that. I trust the Democratic Party will not take it either. Never mind, some people say that they want to vote down this motion. Then go ahead. We have proposed this motion, in a most upright manner. You are in breach of the rules and there has been oversight on your part and the issue of conflict of interest is involved. This is because you own that company and you are a big stakeholder, but you have not made any declaration. It has happened three times. It seems that Ms Miriam LAU has just said that no mention was ever made of that during the discussions on the XRL Project. We agree that it was an oversight. But we have to deal with it all the same. On the contrary, if the report compiled by us shows that we have oversight and we are in breach of

the rules and we have not admitted that something is wrong, if that happens, then our credibility will really go bankrupt, President.

So today we have come to this edge of a cliff and it all depends on what Members would want us to do. This is not a question of a few of us who are Members of the CMI. It is a question of the credibility of this Council. How are we to uphold this declaration system? Is what we are doing unreasonable, unlawful and not sensible? These rules have been there for a long time and no Member has ever challenged them. Members have made declarations in many meetings. And now it is because a Member has not made a declaration and we have pointed out that he is in breach of the rules. Why should there be such a strong reaction? Just whose nerves have we pinched? But anyway, I think that since the rules are already there, then we should abide by them. And we should adhere to them rigorously. If Members think that these rules are not right, then they can discuss and amend them. This CMI has been doing its work for one year, and now what it gets are these scathing attacks. The case is like that when Ms Miriam LAU was the chairman and at that time, there were two or three similar occasions like this. I have seen too many of these things and every time I feel I cannot take it. This is because I think the public have very high expectations of us. They think that the Legislative Council should have a fair, just and open system of declaration of interests. This system is already there and Members should observe it. But if most Members do not want to abide by these rules, then they will have to hold themselves accountable to the public. I am sure their voters will see that very clearly.

**MS CYD HO** (in Cantonese): President, in the legislature, to admonish Member of the Council is a very solemn decision. It must never be made lightly. In this Council, we have a Committee on Members' Interests (CMI) which is composed of members from across all the political parties and groupings. The procedures of making an investigation and writing up a report are very stringent. Our Legal Adviser and the professional staff of the Secretariat will also give us their support. Now that the Report has been published for some time and members of the public and the media can see whether or not the procedures are fair and just.



So, President, it is because of these reasons that I support the decision made by the CMI. However, when I was listening to the speeches made by other Members just now, I could sense that the decision to make an admonishment is very controversial. Therefore, I must rise and say clearly why I support this decision.

The conclusion is stated very clearly in the Report and in fact, the act concerned was merely oversight. Members agreed that there was no deliberate attempt to cover anything up. This is because on other occasions Mr Abraham SHEK has made declarations. But according to the RoP, he is found to have been in breach of it. This is a fact.

Then would the punishment of admonishment be too severe? I do not think there is anything we can do about it. This is already the lightest sanction found in the RoP. Of course, it is already a heavy punishment on the Member concerned if he is admonished in a Council meeting. So we must be very serious in making such a decision.

Another point which we have to consider very seriously is that since this CMI is formed by members from all across the political parties and groupings, and since such solemn procedures have been taken, then we should respect and trust the investigation done by the CMI and the report it compiled.

President, Ms Miriam LAU has just made some suggestions on how overseas parliamentary assemblies would handle cases of mild non-compliance and procedures regarding the declaration of interest. In March this year, with the recommendation by the legislature, I had a chance to go to the United Kingdom and study its parliamentary rules. So I feel obliged to talk a little bit on the foreign experience in this aspect.

The British Parliament has a few hundred Members of Parliament (MPs) and whenever they discuss a topic, they would spend a very long time making declarations of interest and many MPs would wait for their turns to make such declarations. What they do is to rise and tell the Parliament that they have got a conflict of interest. As all their interests are recorded in the register on interests, there is no need for them to read everything out once again, or to make any

special declaration on a certain question. This practice has an advantage and they do not have to do as we do — I think some Members are not making a declaration but they are filibustering — and claim that they ride on a bus or take a taxi, and so on. All this kind of filibustering is unnecessary.

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

The merit of the British practice is that it can save the time in the Parliament. However, if this approach is to be taken, then the media should play a diligent role in monitoring. The media have their social responsibility and when they report the conflict of interest of these MPs, they should look up the register on interests by their own. So there should be no reliance on a detailed declaration by MPs on every occasion. This is something which I think the Committee of Rules on Procedure (CRoP) and the CMI should consider.

As for conducting investigations and taking evidence, many Members are very worried about the possibility of this kind of investigations becoming a political struggle between the parties and groupings, or a means with which the majority would bully the minority. There are some practices in the United Kingdom which I think we can refer to. They would appoint an independent commissioner and this person would in turn appoint some persons outside the legislature and who are of high repute and credibility to be the ethics commissioner. The latest commissioner appointed was the former deputy judiciary administrator. When this commissioner has received a complaint, he will launch an investigation and submit a report later. After this report is submitted to the legislature, a select committee will hold discussions on the report. When the select committee confirms the investigation report from the commissioner, it will make a recommendation to the Parliament as to what kind of sanction should be imposed.

They have many kinds of sanction which are milder than the admonishment under discussion now. One of these is to ask the MP to make a written apology. Another is to require the MP to make a verbal apology in person at a sitting of the Parliament. The MPs told us that making a verbal

apology was also a very severe punishment because when a member of the legislature has to make a verbal apology in person in the assembly, it is also a most disgraceful matter.

So, Deputy President, I hope the CRoP and the CMI can make reference to overseas practices and in future properly handle cases of non-compliance where there is truly oversight on the part of Members but no intention to cover up. Thank you, Deputy President.

**MR CHEUNG MAN-KWONG** (in Cantonese): Deputy President, although I am not in charge of this kind of matters in the Democratic Party, I feel I must rise and speak. This is not because I want to lend my support to the arguments presented by Ms Emily LAU earlier but because, like the President and Ms Emily LAU, I am also a senior Member of this Council with the passage of time, hence we can feel the changes in this Council in a profound manner. So I think I must speak up.

The requirement to declare interest under the RoP is not a mere formality or a matter of ritual, but it is because Members of this Council have a solemn responsibility. This has nothing to do with oversight or whether a person is nice or not. This is a system of declaration of interest and that has to be seen by the public and turned into an institution. This institution can be updated, but the direction it should take is for more stringency rather than leniency. This direction should go in tandem with our pace of democratization and it must not be retrogression.

As an example, you can of course be a remunerated director of a company, but you must make a declaration and you must not speak before you have made the declaration. This is meant to let the public see that you are following a system that is fair and just.

Deputy President, the RoP of this Council may appear on many occasions to be something we know about but which we do not know why it has to be so. We may not know why it has happened. However, in many cases this is the wisdom and experience gathered over time. It may even be a convention in the

Council handed down from the past. It is easy to discard it, extend favours to people or condone their mistakes. But it is hard to rebuild it.

For those rules which are already in existence, provided that they are reasonable, I implore Members and political parties and groupings to stand firm. What is the reason for that?

This Council once had a bitter experience. The first question was whether or not the gentlemen Members should wear a tie. At that time, it was due to environmental protection reasons that we thought the air-conditioning in this Council should not be set at a temperature which was too low. In other words, if the room temperature was not too low, then Members would not have to wear a tie. We felt it was right and so for green reasons, there was no need to wear a tie. But then as things developed, we asked whether or not we could wear a T-shirt. Then the next question was, why should we bow to the President?

Deputy President, do you remember that? In days gone by, when we entered this Chamber, or left it, we had to bow on each occasion. At that time, I was upset. It was not a question of being troublesome or not but at that time the emblem of the Legislative Council was a very British thing and I was upset every time when I had to bow in front of it.

But by and by, I realized that these rites in the Council served to foster politeness and distance among Members. Therefore, when Members debate, there is a buffer of reason between us and our speeches will not become overcharged with emotions. Then we decided not to bow and things went on because we did not mind not doing it.

Then came the issue of the way we spoke. At that time when we spoke, we would be subject to a ruling by the then President John SWAIN if we spoke in a rude manner. I remember once I did not put my words too nicely and he made a ruling that I should take my words back. It was only after I had made an explanation that he accepted. So it was how things were in those days.

But do you think we could not debate in a rational manner? Were the debates at that time not heated and pungent enough? No. It was only because the Council then had very high demands on the manners of Members when they spoke and these could even serve as a model for the community.

Then came those slogans placed on the desk. I have to say that I had a part in that. At first Members only placed some signs, then gradually they placed more and more signs and these signs became bigger and bigger. In the end, I cannot even see the President and he cannot see the Members.

What then will result when every single rule is relaxed gradually? It is we are eating the bitter fruit of that. Members can now interrupt any time, use violent language, throw bananas, wipe out things on the desk, provoke the President and Honourable colleagues and just wait to be expelled from the Chamber. Then all of these repeat once again in the next meeting. The result is that this Council has gradually lost the necessary order and manners. It is a bitter lesson for us and we feel sorry about it.

Now when we talk about the RoP and the system of declaration today, please forgive me for giving an account of all these unpleasant experiences, and I must say that both my colleagues and I have played a part in making the mistakes. We have been acting in a perfunctory manner and allowed mistakes to go uncensored. We think it would be better to do less and speak less and play nice guys. We deserve to taste the bitter fruit of our own making.

Now I cannot turn the tides back with respect to manners, rites and order in this Council. What is lost is lost forever. But I must make it clear that I do not want this Council to lose such an important thing as this system of declaration of interest.

We would be debating many pieces of legislation in future and likewise we would debate many policies. Certainly many interests would be involved. He is a nice guy and I know it perfectly well. Honourable colleagues, do we know anyone better than colleagues whom we have known for 20 years? I think we all know if he is good or bad, honest or dishonest. Obviously, it was an oversight and likewise, it is obvious that it is a failure to make a declaration out of sheer inadvertence. And so he has to be admonished.

In such circumstances, this system cannot be discarded and we can never let go of it. If in the course of the debate we tried to let things go and even Mr Abraham SHEK could have said that Members should not be lenient on him, this is because once the grip is lost, the whole system will become lax and it will even decline or perish.

So I think since we are gentlemen, there are things that a gentleman will do and things that a gentleman will not do, then we should admonish him. Mr Abraham SHEK is a gentleman and as a gentleman he should agree to be admonished. This is not a sanction imposed only on one person and at a specific time or place. It is a move by which this Council can build its confidence, integrity and credibility. I am not trying to exaggerate things, but I think that there are many important matters that we have to handle in future and before we speak, we must declare our interests. This will let people see that our speeches will have credibility. So the system concerned is a very important one.

We may not know how this document called RoP has come about after the bits and bits gathered by people in the past. I do not want to see that we will slip and fall if we become too lenient. And so I would say that as we look back, we have lost a lot. And today and with respect to this matter, since the incident is a trivial one right from the beginning, then let this trivial incident be a cause for our firm insistence on this principle of enormous import.

Mr Abraham SHEK, please do not mind if you are admonished. You would see the point that all this happens because of sheer oversight. There could be a day when people act inadvertently and I may be the next one. Then I would gladly be admonished. But what we will get in return are the solemnity of this Council and the credibility felt in the community. This would be truly worth it all.

Thank you, Deputy President.

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

**MR WONG TING-KWONG** (in Cantonese): Deputy President, I respect very much the results of the work done by the CMI. I admire Members who have spoken in such a righteous manner here in this Chamber today. When we handle the incident about Mr Abraham SHEK by admonishing him, I think there is also a chance for me to be admonished and so I would act with extra caution.

However, I hope Members would pause and think about this. What would our yardstick be if there are cases of the Target Link Limited, Miss WONG, or someone who poses as a fake registered social worker, and so on, in future? Do we need to give admonishments? I think Members are applying double standards and this will deal a great blow to the credibility of this Council. I agree completely with the view that when we are to do something, we should not be looking at one particular individual or thing at a specific time and place. So I hope that this can be put on the record and should any improper conduct be committed by any Member of this Council, the way to handle the matter concerned should be fair, open and just.

Thank you, Deputy President.

**MR PAUL CHAN** (in Cantonese): Deputy President, I am a Member of the CMI. I am serving my first term as a Member of the Legislative Council and, having joined the CMI, I have to handle complaints related to Members' interests. Deputy President, I deal with such matters with extreme caution and care and I keep reminding myself that I must act in a fair, just, impartial and unbiased manner. This is because the matters dealt with by the CMI are related not only to the personal reputation of Members but also that of the Legislative Council as a whole. So I must be extremely careful. Deputy President, it can even be said that I work with trembles and fears.

Of course, as a green horn in the Council, I have all along listened humbly to the views expressed by other Members in the CMI. This is because other Members are more experienced than me and at various stages I have consulted and listened to the opinion tendered by the Legal Adviser. But I have also reminded myself that I must be critical and independent in my thinking. This is because I have to be responsible for the conclusion reached in the end. And it is not only that I should be responsible, I have also to hold myself accountable to the public.

Deputy President, I have been sitting in my seat all the time and I dare not leave. This is because I wished to know what other Members think about this matter and I wanted to see if any new points of view or argument would be put forward. This would allow me to see if there is anything wrong in my

understanding of the case. Deputy President, with respect to this case, especially concerning the premises found in the arguments of the CMI ..... actually, I have waited for a long time, wanting to hear Members' views on that, but unfortunately, there has not been much discussion on that. In issues like, having direct pecuniary interest in a company, does being a director also necessarily have some indirect pecuniary interest? Second, even if a director of the company concerned is regarded as having indirect pecuniary interest, would it be necessary to distinguish between an executive director and an independent non-executive director? Third, on the recommended punishment, when placing a yardstick on these punishments, has the action been consistent throughout or has there been any deviation from or even contradiction with it?

Deputy President, as a Member of the CMI, I would like to make use of this opportunity to give an account of my thoughts and line of thinking for reference by Honourable colleagues and the public. First, the MTRCL would operate the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link in the form of a service concession. Therefore, with respect to funding for the Express Rail Link (XRL), there is a direct pecuniary interest on the part of the MTRCL. Second, Mr SHEK is an independent non-executive director of the MTRCL and since the MTRCL does have direct pecuniary interest in this matter, he also has pecuniary interest in an indirect way. Third, during discussions of the relevant committee on funding for the XRL, as pointed out earlier, Mr SHEK did not make any declaration of interest before he spoke. Fourth, since he did not declare his interest, he was in breach of Rule 83 of the RoP. Fifth, as Members have said, Mr SHEK has in fact mentioned many times that he is an INED of the MTRCL in the register on Members' interests and in the meetings of the Subcommittee on Matters Relating to Railways of the Panel on Transport. I therefore am satisfied that his omission in declaring his interest this time is an oversight and so this is a breach of the rules in a technical sense. Sixth, should he be sanctioned according to Rule 85 of the RoP?

Deputy President, in my opinion, when the CMI handles complaints against Members, it must be fair, just, impartial and unbiased. So when it comes to the question of meting out punishment, we have to be consistent when considering the question. By consistency it means that the yardstick we use to measure on this occasion should be similar to the yardstick we have used on previous



occasions. It also implies consistency in the way we use the yardstick to measure the cases. Some Members have said to me that with respect to the case of Mr LAU Wong-fat, after we had done an investigation, we were satisfied that his omitting to disclose his interest in four companies was due to inadvertence and the CMI did not recommend any punishment. But in the case of Mr Abraham SHEK this time, I have recommended that admonishment. Why?

Deputy President, when we considered the case of Mr LAU mentioned just now, we were very careful. Why were we satisfied that it was an act of inadvertence on his part? I would not repeat the details here because these were mentioned in previous meetings. When we considered whether or not any punishment should be meted out, we had actually referred to some previous cases.

Deputy President, these cases included the following three cases: First, there was a Member who reported to the CMI that there was an omission in disclosing interests concerning an overseas company and later the CMI received a complaint about the case. The CMI decided that no further action was required. No report was submitted to the Council later on. This was because the act of omission did not involve any conflict of interest.

Deputy President, the second case was about a Member who reported to the CMI that an omission was made in disclosing the interest in a block of building. An apology was offered to the CMI. With respect to that case, the CMI did not receive any complaint and no report was submitted to the Council afterwards.

Deputy President, as for the third case, it is about the Target Link Limited which a Member mentioned earlier. The Member concerned in the Target Link Limited case acted on his own initiative and told the CMI after a complaint had been received on that case that he had omitted to disclose his shares interest in another company. At that time, the CMI took into consideration that it was an act of inadvertence on the part of that Member and it was satisfied that it was so. Therefore, the CMI decided that no further action should be taken and no punishment should be meted out.

So when handling the case concerning Mr LAU Wong-fat, we had considered the verdicts of some precedents carefully — actually, I should not

have used the word "verdict" as these were some past cases — however, when we considered how Mr LAU Wong-fat should be punished and what conclusion we should draw, we knew that he had omitted in disclosing his interest in four companies, three of which were shell companies and one was in the restaurant business. About this company in the restaurant business, no declaration was necessary during the meetings of the previous term of this Council because there was no conflict of interest there. Hence with respect to the cases I have mentioned, we suggested that no sanction should be imposed.

Coming back to this case about Mr Abraham SHEK, as I have said, this is because the MTRCL has got direct pecuniary interest in the project and it is the view of the CMI that if a Member is an INED and provided that there is direct pecuniary interest on the part of the corporation in question, the INED shall be deemed as having indirect pecuniary interest. If there is pecuniary interest, then the question of conflict of interest before a Member speaks would arise. The difference is here and it is an issue of a conflict of interest. Therefore, the Member in question has the responsibility to make a declaration before making a speech. If no such declaration is made, then we would consider Rule 85 of the RoP when we think about how this act of non-compliance is to be punished.

As many Members have said, unless Rule 85 of the RoP is not invoked, the starting point for sanction would be an admonishment if it is so invoked. We have been given no leeway with respect to matters related to Members' interests or the mechanism for handling such matters. Some Honourable colleagues have pointed out earlier that an apology, or a letter of disapproval or a warning letter would be used in some overseas national assemblies. But such options are not open to us under the present system and therefore these cases cannot be invoked as precedents.

Even so, have we been consistent and impartial in using this yardstick? What did we do in the past when handling matters concerning the declaration of interest by Members? And what kinds of punishment did we mete out? I have been pondering over these questions. I have talked about the Target Link Limited case just now. In that particular case, in the end the Member concerned was admonished. That was passed by Members in the Council. If we take the Target Link Limited case and compare it with the way we have handled the case of Mr Abraham SHEK this time, do we think that the severity or otherwise of the

sanction is the same? I think Members may already have their own judgment. But when I was to weigh these two cases, as it was a fact that Mr SHEK had omitted the requirement to make a declaration and as I thought that this declaration would involve a conflict of interest, so I would think that pursuant to Rule 85, a sanction should be imposed from the starting point.

Lastly, I wish to point out that I would very much like to hear from Members what their stand is in this matter. In terms of the operation of the CMI, it will not consider the matter settled after stating it. It will take into account carefully what the Council ..... What I mean is that instead of considering this case alone, it would consider also the operation of the mechanism monitoring Members' interests, and this includes what some Members have just said, that there is much room for improvement in that mechanism. We have raised that issue in the CMI as well. Due to the time constraint, I cannot speak on each one of these areas. I hope I can discuss with Members in the next related motion soon. Thank you, Deputy President.

**MR WONG SING-CHI** (in Cantonese): Deputy President, I am also a Member of the CMI. I believe every Member of the CMI had been very rational, benevolent and serious when discussing the report.

In the process, we were worried that when some issues were being discussed, some people would bring up again issues concerning certain Members and for which a decision had been made or a solution had been found. So we had avoided by all means in bringing up certain cases or examples in the Report and throughout the entire process. Likewise, we had also avoided doing anything to provoke anything related to what certain Members had to face in the past and which was not related to the present case. This is because we hope to be benevolent. However, I must say that I am unhappy to note that certain Members have exploited the occasion of this Report and brought up certain matters about what some Members did in the past and which are unrelated to this case. This includes what Mr WONG Ting-kwong has done earlier in mentioning the case of my forgetting to complete the formalities for registration as a social worker.

Deputy President, I do not mind talking about the case of my forgetting to register as a social worker. I was wrong in that incident. I made an apology to the public and admitted that I was wrong in the Court, in the Social Workers Registration Board and in a press conference. Furthermore, it was a fact that I forgot to register, but I did not deceive any person. It was true that I really forgot about it. The Registration Board suspended my licence for six months as a penalty. It would be a grave matter if a lawyer or a doctor was suspended from practice for six months. But it turned out to my big surprise that some people thought that I was no longer working as a social worker and it would not matter if I were suspended. If this is really the case, then I must say that the sentence is unfair. But I did not speak up and I did not do anything in defence. I just thought of one thing and that is, I had to bear the consequences because I had done something wrong. If I am scolded, I would nod in approval if you are right. And if you are wrong, I would just answer back. But in the end, since things have to be done according to the procedures, I would gladly take the punishment. There are Members who have said that this Council has not handled my case. If Members want to do something about it, I would not mind and I will face it frankly. But it seems that this matter is not at all related to the issue of personal pecuniary interest that we are talking about today. I hope that Members, including those from the DAB, will not use these cases for making political attacks.

As for Mr Abraham SHEK, I have heard many members of the CMI and Members of the Council say that they understand very well that Mr SHEK did not try to cover up anything on purpose and he did not try to obtain any gains from his position or influence in this Council. I know Mr SHEK and I do not think he is that kind of dishonourable person. The question is there are clear requirements in the RoP and Mr SHEK has admitted that he has made that mistake. I sincerely hope that Mr SHEK can face up to this past problem and take the admonishment. It is very simple to take an admonishment. I never uttered a word when my licence was suspended for half a year. What is the problem of that? We should admit our mistakes and accept the consequences. I think, as public figures or Members, we should face up to this kind of things frankly.

Deputy President, let me talk a little bit more about my feelings. About the case of social worker registration — as a Member has mentioned it earlier, I would like to talk about my feelings. I have faced up to the matter with an open

mind. I was absent-minded and I forgot about the registration. But I have learnt a lot from the incident. All through these 30 years, with respect to my job, knowledge and attitude in dealing with matters and persons, I can say that I am truly a professional social worker. It is unfortunate that I have made an omission. I have learnt a lesson and that is, the one thing which I treasure most and one which I am most proud of, can easily make me trip over and fall. I have learnt from the incident that I should be humble and I should admit my mistakes and face them. Why can Members not do it? Maybe I am too harsh on myself. We should admit our mistakes. No one will come and beat us up, right? I think what we should do is to discuss in a fair manner, with reference to the RoP. But why do some Members make use of this opportunity and level political attacks at other people? I do not think it is proper at all.

Deputy President, as Members we do not have any executive powers, but in terms of monitoring finances, we can give our approval to some big works projects or ask the Government to spend a large sum of money or not spend a large sum of money. Many interests may be involved in these matters. The RoP serves to make Members accountable to the public and let the public in turn see clearly which Members they should trust and which they should not. It also enables the public to monitor Members and see if they have used their powers and position to advance their personal gains. But I fail to see any Member in this Council who has done anything of this kind. This is the first issue that we have to face.

The other important issue is that we have to let Members or the public see the point that Members of this Council should be trusted by the people. There should not be the slightest doubt among the people and they should be made to think that we are fair in everything we say and do. It is because of this that the Council has drawn up the RoP in the hope that the mind of the public can be put at ease and their doubts dispelled. We want the public to continue to have faith in what we do. It is as simple as that. The aim of the RoP is not to require Members to disclose any information like how much money their companies have made or the role they have played in that. What Members need to do is to state that they are the directors of which companies, and they are telling everyone that with respect to a certain matter, they think that they have some interest or they suspect that their companies may bid in it. This is very simple. But the

Member has forgotten and as a result, he should bear the consequences. It is like the case in which I forgot to do the formalities for registration as a social worker, and my licence had to be suspended for half a year. Mr SHEK, what we are doing is just making a few remarks as an admonishment, and frankly, we may forget about what happened today when we get up tomorrow.

Why do we still make the general public think that Members are shielding the shortcomings of each other? And if this is so, how can we make the public continue to have faith in the Legislative Council? We must observe the RoP with an open mind and we need to make things more transparent. Whenever a Member finds that he or she has done anything improper, then this Member should admit it in public and bear the consequences. It is only when this is done that we can gain the trust of the people in this Council.

Deputy President, about the RoP or the CMI, I would think that as Members, irrespective of whether we are directors or non-executive directors, we should meet some very high standards. This is to make ourselves accountable to the public over the existence or absence of interests as we make our decisions or present our opinions on these decisions. I think such matters should be handled with some very high standards. For after all, there are only 60 Members in the Legislative Council here in Hong Kong and these 60 Members do represent a certain number of people, be it large or small. We can represent the people, though it would be another matter if our representativeness is sufficient. We should hold ourselves accountable to the people and also our voters. In any decision-making process, we should never allow our thoughts to be swayed by any consideration of interests.

This is exactly the purpose of the RoP. If we cannot even do this, then we should admit our mistakes and bear the consequences. So I hope Members can face the public with openness and sincerity. I do not hope that the case about Mr Abraham SHEK this time will give people an impression that some Members are condoning his mistakes and defending his shortcomings. I respect Mr SHEK very much. He is outspoken in many matters. I really hope that Mr SHEK can be given a chance so that he can tell the public that he is prepared to bear the consequences of a mistake he has made.

I hope members of the public can see clearly from this debate whether there are Members who act in a biased manner or there are Members who defend the shortcomings of their colleagues and condone their mistakes or there are Members who make use of a public issue and one which requires accountability to the public to launch their political attacks. This kind of exploitation of the situation is obvious to discerning eyes of the people. It is my hope and wish that the debate today can serve to make the people see that there is still fairness and order in this Council, as well as Members whom they can trust.

Thank you, Deputy President.

**MR ABRAHAM SHEK** (in Cantonese): Deputy President, although I have to take the centre stage today despite my reluctance, I am very pleased to have the opportunity to clarify this incident.

Deputy President, I would like to thank every Member who has spoken today, whether they criticize me, support me, trust me or do not trust me. I have listened to Members' speeches very sincerely. "Heaven is watching the acts of us all". Some Members said that the views of the Committee on Members' Interests (CMI) do not represent Members' views. Just now, Ms Emily LAU pounded on the table with a document, adding that she had to throw away the RoP.

All Members of this Council must uphold their faith in the rule of law. I do not want to see this Council being criticized because of me. Deputy President, if one has done something wrong, he has to admit it. However, the extent of criticism must be fair, too. An English saying, which was translated into Chinese by Mr Ronny TONG just now, has put it very well and clear that "justice must not only be seen to be done, justice must be done". Deputy President, I believe this should be acceptable to us all.

In fact, Deputy President, I am very unhappy about the CMI, for the incident has made me feel awfully bad over the year. Although this is a very simple matter, the CMI has dragged its feet for a year. Today, it is going to put on a "big show", too. Are there any political motives? I believe there is none, as all members of the CMI are good people. Good people will not do anything

like that. However, Deputy President, people really wonder how such a simple matter could have come to this pass.

Deputy President, as you pointed out very clearly just now, and so did many Members there is absolutely no need for me to conceal anything. I am a non-executive director (NED) of the MTRCL. I am very pleased to take up this post because I am a railway enthusiast. As mentioned by Mr Albert CHAN, my passion for railways did not begin today. I have been passionate about railways for years. On railway development, I am concerned not only about the charging issue mentioned by Mr Albert CHAN, but also the contribution made by railways to society on all fronts. To me, this is extremely important. Therefore, there is absolutely no need for me to conceal anything. On the contrary, it is my honour to be a NED of the MTRCL. This is why I will make declaration on every occasion. This is the first point.

Second, Deputy President, I am very sincere in facing the CMI. I had attended the meetings whenever I was summoned by the CMI. Despite being a member of the CMI, I am not a participant. I sincerely answered all questions whenever the CMI requested to meet with me to enquire about the relevant details. Why did I not make any declaration at the three meetings held on 6, 16 and 17 November? I have told them very sincerely that it was not an oversight on my part for failing to declare. Members must understand the content of the discussion held at that time. I recall that a member of the Civic Party asked whether the terminus of the XRL should be built at Kam Sheung Road rather than West Kowloon. From the perspective of the railway, I considered that building the terminus at Kam Sheung Road would have a significant impact on the overall railway development. I was speaking from the angle of a member of the public and in the interest of Hong Kong. My speech had absolutely nothing to do with the MTRCL. I was talking about government policy. In the agreement signed between the MTRCL and the Government, both the alignment and stations of the XRL will be decided by the Government. According to my judgment at that time, I considered that the discussion held then had absolutely nothing with the MTRCL, and so I did not make any declaration. I was asleep, but then I ended up being admonished.*(Laughter)*

Deputy President, at the meetings held on 6, 16 and 17 November, it appeared it was the Civic Party which proposed another study, thus slowing down



the progress. The XRL Project, which is a government project, will be handed over to the MTRCL for construction in the future. When I spoke on this, I was merely expressing my personal views on the Government's policy and the economic impacts on various fronts. However, it has nothing to do with the fact that I am a NED of the MTRCL.

Deputy President, the CMI has not mentioned all this and accepted my explanation despite the passage of a year, so is it fair to me? Mr Paul CHAN, am I being treated justly? I am accused of breaching Rule 83A of the RoP. If I have done anything wrong, as Mr WONG Sing-chi said, I will accept it. But, it is a different matter for me to be accused of breaching Rule 83A. It is confirmed that I was speaking on a matter in which I have an interest, but what interest did I have? From my angle, I was only speaking in support of the Government's policy when someone spoke at the meeting to criticize the Government's policy. What was the relationship between the speech delivered by me at that time and the MTRCL? I have no direct pecuniary interest in the MTRCL. As regards indirect pecuniary interest, I am merely a NED of the MTRCL.

The terminus of the XRL has to be built, whether it be built at Kam Sheung Road or West Kowloon? It has absolutely nothing to do with conflict of interest as those people were not opposing the construction of the terminus. As regards whether there was indirect interest — I should not show off my incompetence in the presence of experts since a number of barristers are sitting here — it can only be confirmed with a test of remoteness. Deputy President, my interest is so remote that it is equal to zero. Members must understand that the CMI does not accept my explanation. Despite my sincere explanation, the CMI has merely said that I admitted my mistake. There is no way for me to alter history. I have indeed not made any declarations, but I have already stated the judgment made by me at that time. It is the same case for the three meetings.

Deputy President, you were sitting here just now, but why did you not speak during these three sessions whereas you chose to speak in so many sessions? Perhaps I have made a mistake, but I do not think so.

Regarding the question raised by Mr Paul CHAN regarding whether the yardstick used was fair, both long and short yardsticks were used in the substandard piling works incidents. Just now, Paul cited the incident involving

the Target Link Limited as an example. A Member who has received an allowance but leased part of his property without declaring his interest ought to be admonished. However, I am subject to the same sanction of admonishment for making a wrong judgment. I find this extremely unfair. If the Member I mentioned just now was not subject to the sanction of admonishment, I may find the sanction acceptable.

Just now Mr CHEUNG Man-kwong put it most correctly in saying that the provisions of the RoP could not be relaxed arbitrarily, as the CMI might fail to play its role as a watchdog as a result. Being a member of the CMI, I do not believe that would happen. There is no need for Ms Emily LAU to react in such an emotional manner by saying she will throw away the RoP and pounding on the table when a Member expressed disapproval of her views.

This incident has nothing to do with universal suffrage. Members sitting here all enjoy the same status. There is no need to mention universal suffrage. We ought to declare interests in accordance with the RoP. I only wish to get justice done. I would like to take this opportunity to tell my three daughters that their daddy has not done anything wrong. He merely fell asleep (*Laughter*) and made a wrong judgment. I do not think I deserve to be admonished.

The CMI has published a report confirming that I should be admonished under Rule 85 of the RoP for failing to comply with Rule 83A. As I explained just now, if a test of remoteness is used, what impact will my speech have on the entire project? The answer is in the negative. I have merely mentioned two stations and a consultant. I have also explained to the CMI very clearly that I have not voted on the funding application in respect of the XRL. So, where is my interest? I have also declared my interest at a Finance Committee meeting. Deputy President, I did not cast any votes. They say that I have breached the RoP, but what provision have I breached? Deputy President, I have only made a technical mistake. A technical mistake and a breach of Rule 83A of the RoP are two different issues. I have admitted that I have made a wrong judgment, but I have also stated clearly that I have reasons to make the judgment concerned. It is said that admonishment is the lightest sanction. Mr WONG Sing-chi has advised me to admit it. Of course, I will definitely admit my mistake if I have done something wrong. Sometimes, people make wrong judgments.

Furthermore, Rule 83A of the RoP involves both direct and indirect interests. When they were going to throw me into the net, they used a very wide yardstick to interpret Rule 83A of the RoP; when they considered ways to sanction me, they used a very narrow one. Deputy President, although they said that admonishment was already the lightest sanction, they used a narrow yardstick after using a wide one. Deputy President, it does not matter to me this time around. I am also very pleased to put on a "great show" on this occasion. Why? Because I am not the only one who gets involved. Any one of us might be led by the nose in the future. I have been played in the palm of the CMI for exactly a year. Deputy President, it has been very terrible. I felt very bad indeed.

Deputy President, regarding the issue of the CMI examining whether I have breached the RoP, I have failed to make declarations but I have already explained why I have failed to do so. I hope the CMI can give consideration from the legal, sensible and rational standpoints. However, the CMI has merely given consideration from the legal standpoint without considering the reasons, though I have explained my reasons. According to the CMI, I have done something wrong. As regards the difference between a NED and an executive director, Ms Emily LAU pointed out just now that the difference involved \$300,000. But, Deputy President, the CEO of the MTRCL even receives a remuneration of more than \$10 million. According to some Members, there is no difference between a NED and an executive director. Insofar as the listing legislation is concerned, there is no distinction between the two. However, when it comes to the responsibility of execution, this is clearly provided for in the Company Ordinance and the listing rules.

Deputy President, I do not want to see views divided so sharply in the Legislative Council. I only want to have justice done. I have made a mistake. I have to apologize to Members for having wasted a couple of hours today because of me. However, "justice lies in the people's heart". Please go ahead if you want people to see that we are impartial and that we are committed to upholding impartiality (*The buzzer sounded*) .....

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

**MR ABRAHAM SHEK** (in Cantonese): ..... but I disagree that I have to be admonished for this.

**DEPUTY PRESIDENT** (in Cantonese): Speaking time is up. Does any other Member wish to speak?

**DR JOSEPH LEE** (in Cantonese): Deputy President, actually I did not intend to speak, though I have listened to Members' speeches for the whole evening. I also have to admit that I do not fully understand the incident. Why? It is because I am not a member of the CMI. I have only heard the views expressed by colleagues on this incident in various aspects. Actually, we have already received this thick report for quite some time. I have only read the first part to see what has happened. Although I had been listening very attentively when colleagues talked about the incident just now, I still do not understand it entirely. Nevertheless, I would like to say a few words about my feelings and views.

I do understand the legal, sensible and rational standpoints mentioned by Mr SHEK just now. Insofar as the whole incident is concerned, I know what will be put to the vote as I am sitting here in this Chamber today. It is stated very clearly in paragraph 4.24 of the report that Mr Abraham SHEK has not declared his interest and, because of this, a decision was made under Rule 83A and then a judgment was made under Rule 85 to admonish him — I have no idea whether he was talking about "lying on the street" or "falling asleep". The entire incident is like this. This reminds me of an incident. I am a member of the teaching profession. If someone asks me about my occupation, I would say that I am a "gatekeeper". Why do I describe myself as a "gatekeeper"? For instance, the passing mark for an examination paper prepared by me this time is 50. So, a student must score 50 marks in order to pass the examination. How about 49 marks? Sorry, from the legal, sensible and rational standpoints, his score is still 49 marks, which means that he has failed the examination. This is what I am supposed to do. What a passing mark means is that if a student scores this mark, I would open the gate to let him pass. If he fails to make the mark, sorry, I would have to close the gate. This means that the student has to re-sit the examination and do his revision again. I am absolutely clear purely from this angle. If we use the analogy of a teacher being a gatekeeper to look at this

incident, Mr SHEK has really failed to make declarations under Rule 83A. The sanction imposed under Rule 85 seems to be the collective decision of the CMI.

In accordance with this procedure, I have already considered casting my vote without speaking again. However, I found the remarks made by Mr SHEK just now quite strange. Mr SHEK said he had reasons not to make any declarations. Regardless of whether or not an interest is involved, he said he had reasons to explain why he did not make the declarations. But strangely ..... I am not sure if this is mentioned in the relevant decision, probably because I have not read the entire report. Certainly, I respect the decision made in the report. However, this again reminds me of what happened to me in performing my teaching duty ..... it happened a couple of months ago. I have also told my colleagues about it — One day, I received a telephone call, and the caller requested to meet with me. When I asked what it was all about, the caller expressed the hope to meet me after the examination about some learning matters. I then agreed. When I went to meet with the caller and sat down in a room, I found the atmosphere a bit strange because I found a group of people, including a student, two parents and the sister of the student, sitting there as if they were ready to fight. I asked them what it was all about. There was no way for me not to meet them. One of the parents talked a lot and said that his child had studied very hard but failed in the examination. He asked me if we were too harsh. I immediately replied that there might be some problems if his child did not pass because our examination questions were too harsh, but I had no reason to be less stringent with the examination questions next time, in order that his child could pass the examination. I said that I would not do so because I was a "gatekeeper". However, there was one point that baffled me. He said that his child failed in the examination because there were several examination questions which had not been taught by us as teachers and studied by his child. Of course, I could inspect the examination paper to find out why — actually, the teaching duty was performed by my colleague, not by me — my colleague had not taught anything about the questions. But why did this particular student fail while other students passed the examination? Of course, it might be possible that nothing had been taught on several of the 20 questions in the examination paper. Even though the subject matter of the remaining questions had been taught, the student had not revised them at all. That was entirely incomprehensible to me. I then told them that I would go back to do some checking and verification. Although I dared not promise to let the student pass, would there be a chance not to calculate the marks of the problematic questions? I had no idea.

Now coming back to this matter, this analogy seems not entirely appropriate, why? It is because I have some doubts. I do not know. When I cast my vote later or on this motion, I would actually vote on the first point I mentioned just now: according to the CMI, a sanction is to be imposed under Rule 85 because of a breach of Rule 83A. Why? It is because a motion has been moved under Rule 73(1)(e) of the RoP for Members to vote on. This would lead to some problems. When I heard Mr SHEK's speech just now, I was actually wondering if he was making an appeal here, or whether we should act as the second gatekeeper. Can an appeal be lodged against the decision made by the CMI as the first gatekeeper? I have no idea. But it seems that nothing like what Mr SHEK said just now could be found here. I think I must handle with great care when casting my vote. Under such an unclear situation, of course, if we purely judge by the report without looking at other matters, Mr SHEK has indeed made a mistake in breach of Rule 83A. There is nothing we can do about it. When imposing sanctions, regardless of the reasons for making the mistake, the lightest sanction is for Mr SHEK to be admonished under Rule 85. Is it right to do so? I have no idea. But, this is a fact. Such being the case, I will respect the CMI's decision. I will vote in favour of its decision because this is a fact. Nevertheless, after listening to Mr SHEK's remarks, I am surprised to find, if I have not misunderstood what he meant, that he actually has no interest to gain. Even if he has a role to play, he still has no interest. So, why should he make any declaration? This is the first point.

Although I do not know if our RoP is flawed or ambiguous, I am very clear that we are going to vote today, not discuss ..... the purpose of our debate today is not to discuss whether the existing RoP is appropriate or comprehensive, or in need of a review. This is absolutely not the case. Hence, based on this reason, I think if I merely base on the fact that can be seen here ..... but then I have heard Mr SHEK's speech. Though he thinks that his explanation is very clear, it has nothing to do with interest — I have no idea how true his remarks are, but I believe all the remarks made in the Chamber are not lies — under such circumstances, I really do not know whether the voting today ..... the outcome is not important. However, I wonder if the voting merely indicates my approval of the CMI's views without considering Mr SHEK's remarks, or it provides an opportunity for appeal, so that Mr SHEK can tell us the whole story before we cast our vote for a decision. We must bear in mind that we are the second gatekeeper.

Before we are clear about our role, I believe I must consider how to cast my vote. Hence, I think that it is very likely for me to abstain later, because I do not have a good understanding of the fact. Of course, even if I abstain, that does not mean that I do not respect the CMI's decision. My understanding is, even if the CMI's decision is not spelt out clearly here, if I have not heard it wrong, the CMI's decision is not unanimous, or without any voices of opposition. It is not unanimously decided by the CMI that Mr SHEK should be sanctioned under Rule 85 because of a breach of Rule 83A of the RoP.

Under such circumstances, I find it very strange. If the report represents a unanimous view, it does not matter whether or not Mr SHEK was telling the truth. If the report is unanimous, different Members should not have expressed different views. This is very strange indeed. After listening to such a lengthy debate, I actually feel quite confused. Under such circumstances, I do not think I can press the button to indicate my decision. For this reason, I will abstain.

Thank you, Deputy President.

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

**MR LEE WING-TAT** (in Cantonese): Deputy President, many parliamentary conventions are developed over a long period of time. These conventions considered by me to be good are not prescribed by legislation.

During the colonial era, many practices of the Legislative Council were basically copied from the practices and rules of procedure of the British Parliament. A lot of things are now taken for granted, for we have grown accustomed to them. This is the place where the policy address is delivered by the Chief Executive. Will the people wonder why the policy address is delivered here rather than Government House? Even the budget is delivered here by the Financial Secretary.

In the past, whenever a major government policy was unveiled, the relevant Secretary of Department or Policy Secretary would make a statement here in this Council. I was very annoyed because the Financial Secretary unveiled his

revised budget just outside his office in a poorly organized manner. That was a great disgrace!

In overseas assemblies, if a prime minister cannot secure the support of the majority of parliamentary members or if a major bill or policy cannot secure the support of the parliament, generally speaking, the prime minister would tender resignation together with his cabinet, though this is not prescribed in law. There is no legislation requiring the prime minister to quit with his cabinet when a major bill or a budget fails to gain the support of the parliament.

There are many conventions here in this Council. The policy address is delivered here by the Chief Executive, to be followed by the Chief Executive's Question and Answer Session — it was actually copied from Britain's "Prime Minister's Question Time" during the Chris PATTEN era.

A couple of months ago, I read a book written by former British Prime Minister Tony BLAIR about his political career. A line in his book reads, "The road to Parliament is like hell". Despite years of political work, he wrote that going to the Parliament is like going to hell. Deputy President, there was nothing he could do but appear before the Parliament every Wednesday, regardless of how uncomfortable he might feel.

Sometimes, it seems to me that all this can be taken for granted. But, for instance, the accountability of the executive authorities to the Legislative Council or the good political tradition is built up over a long, long period of time rather than overnight.

In the Legislative Council, there are several major committees which hold enormous powers. As Members know, one of these committees is the Public Accounts Committee (PAC). The PAC has enormous powers because it has the power to summon government officials. Should a government official refuse to appear before this Council after a few summons, the PAC has the power to order the official through the President to appear before this Council. Another major committee is a select committee set up under the Legislative Council. The select committee, similarly, has the summoning power. Should the relevant persons refuse to come before us, we can approach the President of this Council or ask police officers to "escort" the relevant government officials or witnesses to appear



before us. The third one is definitely the Committee on Members' Interests (CMI), which is responsible for monitoring Members' conduct and integrity.

From a certain angle, these committees are set up so that they can take up some of the major work of the Legislative Council. Dr Philip WONG, Chairman of the PAC, will deliver a report later on. Through a long period of enquiries and questioning, the PAC is responsible for examining the propriety of the Government's work. As for select committees, two such committees have been set up this year to separately deal with LEUNG Chin-man and the Lehman Brothers incidents. They must hold a number of meetings, collect evidence, raise questions about a number of issues, and publish a report. Finally, it is the CMI we are talking about.

Members who have served this Council for a very long time should be aware that some colleagues do not want to join these committees. For instance, I do not like to join these three committees because it is a painstaking task. This is why I once joked that I wished to apply for lifelong exemption after completing the work of the Select Committee on LEUNG Chin-man.

The document for each panel meeting has only a few pages — I am not joking — the Select Committee ..... I have to return all the documents prepared by the Select Committee on LEUNG Chin-man to the Secretariat within these two weeks. There are a dozen boxes of files of this size. I should have read all the documents in the files.

I believe the CMI was in a situation similar to that of the PAC chaired by Dr Philip WONG. As the volume of the documents required to be read is so large, it must be very difficult for the members. It is because these committees ..... Deputy President, pardon me for the bluntness, there is not much chance for them to "appear on camera". A Member wishing to receive news coverage must not join these committees because this is going to be a painstaking task. Not only does he need to spend a lot of time reading documents, he must also have the patience to raise questions and then prepare a report.

Why must I spend so much time talking about all these things? It is because it takes a very long time for the Legislative Council to build up a tradition. However, it is very easy to destroy one. When there is the first

precedent, there will be the second one and then the third, which means that the tradition is actually gone, Deputy President.

Actually, it is more than what Mr CHEUNG Man-kwong said. What he mentioned, such as Members' attire and the objects that can be displayed, is certainly important, though I do not like it very much. In my opinion, what is more important to the operation of this Council is that these committees can take up some of the major work of this Council.

Generally speaking, the CMI is composed of various parties and groupings. Deputy President, the purpose of having participation from colleagues from each party and grouping is that during the deliberations of the investigation, all sorts of opinions would have a chance to be expressed, such that the general epitome of the Legislative Council is seen in the CMI. This is why we seldom raised any queries in the past about this sort of select committees or special committees. The present case is relatively rare.

Since I became a Legislative Council Member in 1991 — though I was not a Member of this Council for four years — I have seldom seen such issues being debated in this manner. Just now, some colleagues or the Member in question raised this question: Does it mean that the CMI cannot be questioned simply because it has done its job? The answer is definitely in the negative. If a colleague finds something dubious after reading the report and wishes to raise his queries in the debate, he is certainly free to do so. However, as mentioned by Mr Paul CHAN — I listened to his speech very attentively because he does not belong to the pan-democratic camp. Just now, Mr Abraham SHEK seemed to ask whether justice could be done. In his 15-minute speech, Mr Paul CHAN said that he had not heard any views from any colleague who had spoken that could make him reconsider the CMI's decision. I cannot but believe that Mr Paul CHAN was most sincere in participating in this inquiry or study, or monitoring the work of the CMI. Just now, he spent more than 10 minutes expressing his views.

As I mentioned just now, Deputy President, this Council does allow Members to raise objection to committees tasked with special duties. But, as we said, the views expressed must be very clear. The most popular view I have heard boils down to only a few points. First, this is an inadvertent mistake on the part of Mr SHEK. This is the most mentioned point. However, as

mentioned by colleagues of the CMI in their speeches, the first basis for the conclusion is that there is a requirement of declaring interests. Second, even if this is an inadvertent mistake, a decision has already been made, and according to this decision, sanction must be imposed under the RoP. Under the existing system, the lightest sanction is admonishment.

Of course, it is hard for the party in question to bear, given that the case has dragged on for a year. Everyone can share that feeling in dealing with such work. However, such a feeling will not and should not influence these committees — committees tasked with special duties — they have spent so much time studying the case and reading the documents while allowing the relevant Member to express his views and explain according to a procedure considered by us to be fair and impartial. Of course, it is another issue as to whether the CMI accepts the relevant Member's views.

Lastly, Deputy President, I would like to respond to some remarks made by Mr WONG Ting-kwong, who mentioned the Target Link Limited incident and said that some colleagues were at fault. He once asked the democrats this question, "Now that some of your colleagues are at fault, how will you deal with the Target Link Limited incident?" On hearing what he said, I deliberately asked Mr James TO about the details of the incident. Actually, I was aware of the incident. Insofar as the incident was concerned, the CMI held the unanimous view that it was an oversight on the part of Mr James TO, as with the case of Mr Abraham SHEK, though the conclusion was the same, that is, Mr James TO had to be admonished. There was nothing like admonishing the democrats for a momentary oversight but sparing the non-democrats for acting in the same manner. Should that be the case, our rules will start to collapse. Deputy President, this Council is currently facing such challenges. The phenomenon we have seen is that, should the first precedent be set, as mentioned by me just now, whereby the government officials being investigated by the PAC might lobby Members of the Legislative Council or make their views known to the select committee concerned or the PAC, then the situation confronting the relevant committee will be changed, if we do not have adequate reasons to overturn the CMI's recommendations this time around. Such being the case, the tradition we have built up over the past decades will disappear slowly, Deputy President.

Deputy President, nobody likes to be investigated. I appreciate Mr SHEK's feeling. However, we must bear in mind that we are dealing with a case

involving the parliamentary system. It is not surprising that the different situations encountered by us in dealing with our work or affairs might lead to different consequences. However, all the 60 colleagues who are here must be committed to upholding this system, rather than the notion of understanding his situation because we know him. Otherwise, this system will fail to command respect from the public and colleagues who are sitting here. With the gradual disappearance of our prestige, the system will lose prestige, too. Deputy President, should that happen, how can we establish a fair and impartial system?

Deputy President, the last point I would like to raise is that I disagree with the remark you made in your speech just now. You said that some of the admonishment systems adopted by overseas parliaments were relatively light, so this should be examined in the future. I am absolutely open-minded about this. However, we should not overturn the decision made by this committee tasked with special duties just because we do not currently have such a system. Otherwise, we actually have failed to do what we should originally have done. Thank you, Deputy President.

**DR LAM TAI-FAI** (in Cantonese): Deputy President, I am puzzled and surprised that Mr Abraham SHEK pressed the "Request to speak" button before all colleagues had made their speeches. This fully demonstrates his sheer anxiety and frustration, and his hope for vindication as soon as possible. After listening to the speech delivered by Mr LEE Wing-tat just now, I believe he has failed in seeking vindication and making Members change their views of him. As regards whether his speech can change my view of him or this incident, he has to listen carefully.

Mr SHEK has admitted that, being a NED of the MTRCL, he has failed to make declarations before speaking at the meetings of the Subcommittee on Matters Relating to Railways, thereby constituting a breach of Rule 83A of the RoP.

Many colleagues indicated in their speeches just now that the mistake made by Mr SHEK was just an inadvertent oversight. But surprisingly, in his speech just now, Mr SHEK indicated that it was not due to an oversight. Instead, he considered that there was no need to make declarations. I am really very

surprised. If I have not heard him wrong, he was saying that, simply, there was absolutely no conflict of interest, and he personally would not gain any benefits.

He even added that, strictly speaking, the breach, even if it was treated as such, was merely technical. Therefore, if he is to be admonished — my pronunciation must be very accurate — it would really be excessive and too harsh. His remarks remind us that we might be victimized in the future, too.

Of course, opinions may differ as to whether his remarks are correct or not. I understand that it must be terribly hard for Mr SHEK to be admonished at this age by this Council. But I have also heard some colleagues say that admonishment is already the lightest sanction in the RoP. There is no lighter sanction that can let go of Mr SHEK lightly.

Some colleagues said, "Tai Fai, being a member of the business sector and a newcomer, you must be careful with making declarations from now on." I am not at all worried about this because I am not an executive director of any listed company. Nor am I a director of a private company. Certainly, if the complaint against Mr SHEK is substantiated, thereby resulting in Mr SHEK being admonished, I will naturally be more careful to avoid repeating the same mistake.

Under the RoP, a Member shall, before speaking on a certain question, make a declaration or disclosure, if there is direct or indirect pecuniary interest. However, we can see in this incident that the RoP appears to have not provided a specific definition or drawn a clear line for "indirect pecuniary interest".

In view of the ambiguity and flaws of the provisions of the Government's proposed Competition Bill, small and medium enterprises will definitely be innocently victimized should it be passed. This I can feel personally.

Hence, apart from voting on whether or not Mr SHEK should be admonished, we should also explore the future direction and study the need for amending and improving the RoP because times have changed and society has also become more complicated. This issue warrants Members' careful consideration.

I agree that many people may mistakenly step into the minefield if the RoP is not amended or improved. Let me cite LAU Wong-fat as an example. I

believe many issues involving the New Territories, such as affairs relating to environmental protection, housing, healthcare and farmland, will be discussed at our meetings in the future. Even if we put aside his family or assets, LAU Wong-fat, being the Chairman of Heung Yee Kuk, is involved in everything. If he is required to make declarations on every item of business, he will simply have no time to attend meetings as he will need to spend a lot of time making declarations. Don't we need to strike a balance between keeping the smooth conduct of meetings and monitoring?

Having said that, I have always held Mr SHEK in high esteem, because of his rich political experience. Having been a Legislative Council Member for three terms, he has more than 10 years of experience. He should be a veteran in battle, or a wise old bird. Even if he admits that he has breached the RoP in the technical sense, it does not mean that the public will agree with him. I think he needs to think and judge carefully. Anyhow, in the face of a small setback, he can be compared to an old stumbling horse — although he is smiling.

Deputy President, I was a member of the Select Committee set up by the Legislative Council to conduct a lengthy inquiry into matters relating to the post-service employment of Mr LEUNG Chin-man. I very much understand the great importance attached by the public to declarations of interest. In the course of the inquiry, I frequently requested the executive authorities to constantly revise and perfect the mechanism for declaration of post-service employment to prevent people from having conflict of interest.

Therefore, Members cannot be lenient with themselves, but strict with others, because the public do not understand us entirely. They might know that we have direct conflicts of interest, but might not realize that we have indirect conflicts of interest. Hence, I think that establishing a declaration mechanism can enable the persons concerned to make declarations, so that the truth can speak for itself. Such a mechanism is necessary. In my opinion, the requirement for Members to declare their capacity as directors or interests relentlessly before their speeches must not be taken lightly.

Let me take this opportunity to say a few words about education affairs. Sometimes I would feel very embarrassed because I have to declare that I am the School Supervisor of Lam Tai Fai College whenever education affairs are discussed. This is really very embarrassing. Members must not think that

making a declaration is an easy matter. Whenever I make the declaration, people would invariably think that I am using the opportunity to publicize the College because I want others to know that I have injected a lot of manpower, resources and money into education and, as a result, founded Lam Tai Fai College. Some people might accuse me of using the opportunity to publicize the College. This is really embarrassing.

However, if I do not declare my interest as the School Supervisor of Lam Tai Fai College, I will run into trouble and be admonished repeatedly when we discuss such issues as Direct Subsidy Scheme schools, tuition fee increases, incidents involving schools operated by the English Schools Foundation, and national education. In more serious cases, I might be reprimanded and even be relieved of my duties as a Legislative Council Member. Therefore, sometimes I have to shamelessly make declarations despite all the troubles.

The next subject I would like to discuss is the East Asian Games. When I declare later on that I have donated \$6 million, people will turn and laugh, saying that I am publicizing my own donation. But if I do not make the declaration, I will run into trouble. Therefore, in making the declaration, we must be shameless and relentless without fearing embarrassment. It feels really terrible making declarations. Members must not think that it feels good to do so. Actually, it feels terrible. Nevertheless, there is nothing I can do because there are express provisions in the RoP. Even if I am dissatisfied, I still have to observe the relevant requirements.

Even if I am dissatisfied with section 39E of the Inland Revenue Ordinance (*Laughter*), I still have to pay the penalty for non-compliance. The only thing I can do is to urge the Administration to amend the Ordinance. However, no one can avoid paying the penalty if he is found to have contravened the Ordinance. The reality is reality. We must accept the reality. In particular, Mr SHEK is the director of dozens of companies, which are mostly associated with the real estate sector. Given his countless ties, people's suspicion of him is unavoidable. The likelihood of arousing suspicions is very great, too. He should know very well that, being his good friend, I hope he can be careful with every step he takes.

Although we have known each other for only a very short time, I trust my own judgment. As some colleagues said just now, I very much trust his character and integrity. I believe he has not gained any benefits and taken any advantage during the process. However, the fact that I know him does not mean

that the public know him; the fact that I agree with him does not mean that the public agree with him. His reputation does not deserve to be tarnished because of an advertent mistake on his part — despite his repeated emphasis that there is no need for him to declare, I think that he has merely made an advertent mistake.

The relevant investigation has taken nearly a year's time. Mr SHEK is very busy and has to attend to hundreds of important matters every day. There are a lot of things he can do in a year. I believe he should learn from his mistake. As mutual encouragement, let us learn this lesson. Please do not laugh at me when I mention Lam Tai Fai College in the future, because I really have to make this declaration.

Nevertheless, I still wish to say something nice about him. I have read many minutes of meetings and found that he had made declarations on numerous occasions but failed in doing so only occasionally. Strictly speaking, he is not 100% in breach of Rule 83A of the RoP. His breach of the RoP this time around is only very light, though "admonishment" is already the lightest sanction, for one half or even a quarter of an "admonishment" is out of the question. He must understand the difficulty faced by the CMI and respect the spirit of the RoP.

Of course, I hope colleagues can seriously consider if there is a need to improve the relevant declaration mechanism, or even amend it by including more sanctions rather than keeping the *status quo*, that is, sanctioning through admonishment, reprimand, or suspension. Can a few more sanctions be added?

Lastly, I think that Mr Abraham SHEK is excusable in this incident. He only deserves half of an "admonishment".

Thank you, Deputy President.

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

**MR PAUL TSE** (in Cantonese): Deputy President, in order to make our voting preference known to the public because of the need to put the motion to the vote, and in view of the fact that many colleagues have already spoken, I am afraid I



also need to clarify whether I will vote in support of or opposition to the motion, despite Dr Margaret NG's remarks that such matters should be put to the vote rather than debated according to past practices.

I hope my speech can give Mr Paul CHAN an answer. At the same time, I wish to remind Dr Joseph LEE that, despite the absence of a formal appeal mechanism, this procedure can be regarded as some sort of a filtering mechanism, just as matters going through the procedure of discussion by panels, scrutiny by the House Committee, and then tabling before the Legislative Council for a vote. Even if this is not a direct appeal mechanism in principle, at least a mechanism is in place to allow Members to make a decision after expressing their views.

When delivering their speeches just now, some colleagues failed to declare their interest as CMI members according to the spirit of Rule 83A. Although this is just a public record, the spirit of Rule 83A is not simply about keeping records. Members are required to make verbal declarations before speaking and voting. Hence, I would like to remind colleagues who have failed to declare their interest just now. In particular, Ms Emily LAU and Dr Margaret NG did not declare their membership of the CMI. Others include Mr Alan LEONG, who was a CMI member before his resignation, though his membership was taken over by Dr Margaret NG starting from 16 February 2010. Members who have declared include Mr Paul CHAN, Mr WONG Sing-chi and, of course, Mrs Sophie LEUNG, Chairman of the CMI, who declared her membership a long time ago.

Deputy President, we should certainly respect the result of months of efforts made by the CMI. I have conducted a survey and found that the CMI has worked relentlessly for 15 months and held 20 meetings. We should not vote hastily without reading carefully the relevant report or listening to the related debate. It is not an issue of swallowing one's anger or accepting six months of suspension. Instead, some people regard a tarnished reputation even more important than their lives. This is why I absolutely respect the strongest defence in principle made by anyone with respect to any matters considered by him to be unfair.

Nevertheless, we must exercise extra caution if we are to overturn the prudent decision made by the CMI, especially the decision made after months of prudent consideration by Members including Senior Counsels and veteran

Members, such as Dr Margaret NG. My speech below can be divided into two parts. The first part is about my observation of the findings with respect to a breach of the RoP. The second part, which is considered to be more important, is about my views on the proposed sanction of admonishment.

As the relevant provision has been quoted by a colleague just now, I will not repeat it here. A paper containing a written explanation given by the CMI about the interpretation of that provision is in Appendix IX tabled at a meeting held by the CMI on 16 December 2009. In this paper, among other things, a detailed explanation of the interpretation of Rule 83A is given. Moreover, regulations adopted by other assemblies and countries are quoted as a guideline to, in particular, explain what direct or indirect pecuniary interest means and the circumstances under which people holding certain posts will cause this problem. The relevant definition includes not only a director, but also a shareholder or officer. The problem of partnership is also mentioned therein, though we need not conduct a debate on this today.

More importantly, I wish to point out that it is stated clearly in paragraph 8 of the aforesaid paper that the basic principle of the entire Rule is whether the interest might reasonably be thought by others, including all members of the public or people attending the meetings, to influence the Member's actions or speech in the matter being considered. It is also stated clearly in the same paragraph that the fact that a Member has registered his interest does not obviate his obligation to declare again. In fact, they have an extra obligation to declare at each meeting.

The problem is: What does "matter" mean? Rule 83 clearly spells out what are and what are not registrable interests. However, Rule 83A was a subsequent addition. Members would know that Rule 83A was a subsequent addition on seeing that the Rule is numbered as "A". This provision, which is different from customary provisions, was made in 2002. Rule 83A provides that Members are required to make a declaration in respect of the motion or matter involving his interest at a meeting. I believe all Members will understand what a motion means. A motion must be written in black and white, even for a motion of a panel. Therefore, the scope of the relevant matter should be very clear. However, when it comes to the matter discussed, the definition of the "matter" here is a bit ambiguous. Is the matter discussed refers to the entire XRL Project or such single issues as the economic returns of the XRL or whether

its terminus should be built at Kam Sheung Road or West Kowloon? Each discussed matter can be different.

Just now, Mr Abraham SHEK pointed out angrily that there was simply no need for him to make declarations because the matters discussed at the meetings were mainly about the Kam Sheung Road option. I have read the minutes of the three meetings attended by Mr SHEK and found that only the Kam Sheung Road option was discussed at the first meeting and this option was also the major issue discussed at the second meeting. However, the issue of economic returns was briefly mentioned in the discussion at the third meeting. Hence, it is fair to say that two thirds of what Mr SHEK said is probably correct, and one third might involve whether or not the XRL should be constructed. Therefore, there is a need for clarification with respect to the records kept in this respect.

While Members are simply required by Rule 83 to make registrations, Rule 83A is relatively transient in the sense that an approach of giving a day-to-day account is adopted whereby Members are merely required to spend a couple of minutes to account for their interests at a meeting. Will this approach sometimes give rise to certain considerations?

Paragraph 9 of the guidelines mentioned clearly points out, "It is the responsibility of the Member to judge whether a pecuniary interest is sufficiently relevant to require declaration. A pecuniary interest should be declared if it might reasonably be thought by others to influence ..... should make specific reference to the nature of the Members' interest. Any declaration should be sufficiently informative". It is a bit paradoxical here for on the one hand, the Member has to take into account what is reasonably thought by others and, on the other hand, make a subjective judgment about what others might think. This is a mixed judgment criterion. As a result, we cannot entirely look at it from an objective angle, and subjective considerations might be required to judge what might be thought by the relevant Members at that time.

Deputy President, the complaints mentioned in the CMI report are targeted not only at the MTRCL. For the sake of fairness, it must be pointed out that there are three allegations involving Mr Abraham SHEK, though two of the allegations did not lead to any result, and so there is no need for further discussion here. Besides, the relevant complaints also involved other colleagues. As it is a public document, for the sake of fairness, it must also be

pointed out here that there was one allegation each against Mr Jeffrey LAM and Dr Raymond HO, though no result or consequence came out of these allegations. As regards the allegation related to the MTRCL, paragraph 2.11 of the report points out that, according to the Government's announcement, the MTRCL would be asked to proceed with the further planning and design of the XRL Project. As everybody knows, it is actually commonsense, as the MTR and the XRL are inseparable. Such issues as how the matter is to be dealt with, which subsidiary will undertake the work, and what arrangements will be made are all matters of the future. In fact, the relevant views merely represented the Government's thinking, and a formal decision had yet to be made.

As I mentioned just now, insofar as this matter is concerned, should we merely focus on Mr SHEK's capacity as a NED of the MTRCL, which means that he will immediately be sanctioned so long as he fails to make declaration with respect to a certain topic at a certain meeting, or should other factors be taken into consideration as well? In this respect, I think that more room should be allowed Members' judgment, as the two views mentioned above are not entirely wrong. What standard and criteria should we adopt in making judgments? Should the matter be dealt with according to the standard of proving beyond reasonable doubt or criteria which are reasonable and more desirable? In cases involving the reputation of any person or sanctions imposed on any person, we should actually act according to an extremely prudent standard. There exist some doubts here.

More importantly, I find that many colleagues have not noticed the necessity of imposing sanctions. As such, I would like to highlight this point for discussion. Many colleagues have claimed that they have no alternative because this would be the result of a follow-up action on Rules 83A and 85. But is there really a need to take follow-up action under Rule 85? Can Members choose not to take any action? In certain cases in the past, as clearly pointed out by Mr Paul CHAN just now, several cases had not led to any consequences, and hence no follow-up actions. Of the four cases mentioned by Mr Paul CHAN, three cases had no consequences, whereas only the Target Link Limited incident led to a result.

I noticed that all these four cases are related to Rule 83, which clearly provides that Members must declare their interest in writing. As there is a lot of time for preparations, the degree of accepting and tolerating such oversight

should be relatively low because, despite the abundant time for preparations, the Member has failed to register, throughout his four-year term of office, the interest he should have registered at the commencement of his term of office. Rule 83A, however, is different, as it is about a decision made in the course of a couple of minutes at a meeting. A Member will miss the opportunity for declaration should he fail to pay attention. So, should Members adjust suitably when considering sanctions in this respect?

Furthermore, many colleagues agree that it is just a momentary oversight. As a lawyer, I understand that a momentary oversight is not a ground for proving innocence, but it can be taken as a factor for consideration when sanctions are determined. Not long ago, the momentary oversight on the part of Mr LAU Wong-fat was only taken lightly by Members. We must bear this yardstick in mind. Why did we take the case lightly at that time? The relevant case involved three shell companies and one operating company. Though unrelated to direct interest, it was similarly related to a failure of declaring indirect interest.

Deputy President, I hope I will not offend any persons in making this remark. However, the same committee has adopted the same yardstick to impose the sanction of admonishment, though it is said that this is the only option because there are no other alternatives. I also understand that the CMI considered Mr Jeffrey LAM had breached the rule on the same ground. In paragraph 4.32 of the report, the CMI stated with very clear reasons that Mr Jeffrey LAM was found in breach of the same rule in respect of an individual incident, but due to certain reasons, the CMI had decided not to take any actions against him. Concerning these reasons, we might discuss in detail in another motion debate to be conducted what it means by a NED, a parent company, a subsidiary, and so on. We can then have a lot of time to discuss these issues by then. Now, the same yardstick is adopted by the same committee and members to measure the same things with the same result of a technical breach of the rule under the same provision, but no follow-up action is recommended for that case. I consider this extremely paradoxical. In this respect, there is simply no need to cite other examples for comparison. Technically, the two cases involve a breach of the same provision, but why is it that no follow-up is required for one case and admonishment has to be imposed in another on the ground that there are no other alternatives? I simply cannot find the answer. I hope the CMI can give us a reply should it wish to uphold its conclusion.

I have attempted to find some principles for making case judgment. Apparently, the only justification is that the CMI considers that the relevant guidelines have failed to specify clearly the circumstances of a parent company and a subsidiary, and hence no follow-up actions need to be taken on the allegation against Mr Jeffrey LAM, the two allegations against Mr Abraham SHEK and the one against Dr Raymond HO. Therefore, the CMI will give notice on this occasion, and the relevant provisions will be enforced on the next occasion. However, I consider this criterion improper. Moreover, it is illogical and lacks a base in principle. Even if all the related decisions made by the CMI are supported by Members, this admonishment motion should still not be passed in this Council, if this test is failed.

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

**MR PAUL TSE** (in Cantonese): 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): I now call upon Mrs Sophie LEUNG to reply. This debate will come to a close after Mrs Sophie LEUNG has replied.

**MRS SOPHIE LEUNG** (in Cantonese): Deputy President, under Rule 85 of the RoP, any Member who fails to comply with Rule 83A (Personal Pecuniary Interest to be Disclosed) may be admonished, reprimanded or suspended by the Council on a motion to that effect. During the discussion just now, Members noted that Mr SHEK had failed to disclose his interest as an INED of the MTRCL before speaking at the relevant meetings of the Subcommittee on Matters Relating to Railways (Railway Subcommittee).

(THE PRESIDENT resumed the Chair)

Of course, the CMI is satisfied that the failure is due to an oversight. It has proposed that Mr SHEK be admonished because we have a very direct procedure whereby we jump from Rule 83A to Rule 85. And, under Rule 85, a Member may be admonished, reprimanded or suspended by the Council on a motion to that effect. We have tabled the report and motion before the Legislative Council to allow Members to decide and vote on the motion. Members are not obliged to accept our views. We have merely tabled the report before the Legislative Council.

In fact, the CMI has repeatedly explored whether there are more appropriate ways to deal with the matter. As I said earlier, we have no other alternatives. Regarding the question raised by Mr Paul TSE just now, I believe Members will have a clearer understanding of our problem after a detailed discussion on the next motion, because it is also about conflict of interest.

I would also like to say a few words explaining why there has been such a long delay. During the past 15 months, we had held 20 meetings and numerous discussions because we were very cautious in exploring many levels of work again and again. Despite our wish to expedite the progress, I as Chairman of the CMI can only respect members of the CMI with respect to their speaking time and discussions.

In the end, after listening to the views expressed by Members, I think we also need to go back to the CMI to study the various practices of overseas legislatures. As some Members mentioned just now, initially, a lot of things in our RoP, for instance, were modelled on the parliamentary system in Britain. However, we have recently learnt that the British Parliament has since time unknown (as mentioned by Ms Cyd HO and Ms Miriam LAU just now) begun streamlining its declaration practice before the delivery of speeches. All this will be re-examined again when we go back. It might even be necessary for us to consider whether our RoP should deal with certain new circumstances in future, as suggested by some Members. We will raise all this in the CMI for discussion.

Nevertheless, as indicated by a number of Members just now, being members appointed by the Legislative Council to the CMI, we can only deal with

matters in accordance with the relevant procedure, doing what we are allowed to do according to the express provisions of the RoP, though we have proposed numerous times to use other more convenient ways. Nevertheless, we must comply with the RoP.

I would like to remind colleagues that they do not have to vote in strict accordance with our point of view. We have now proceeded from Rule 83A to Rule 85 in proposing the motion. The only point I would like to make is that Members have every right to vote on this motion according to their own preference.

Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mrs Sophie LEUNG 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)

Ms Emily LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

(When the division bell was ringing, Mr Abraham SHEK stood up)

**MR ABRAHAM SHEK** (in Cantonese): President, I am not going to cast any vote.



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

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

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr Paul CHAN and Mr CHEUNG Kwok-che voted for the motion.

Dr Raymond HO, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr IP Kwok-him and Mr Paul TSE voted against the motion.

Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr CHAN Kin-por, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Frederick FUNG, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE and Mr CHAN Hak-kan voted against the motion.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, five were in favour of the motion, 11 against it and eight abstained; while among the Members returned by geographical constituencies through direct elections, 22 were present, 13 were in favour of the motion, six against it 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 motion was negatived.

**PRESIDENT** (in Cantonese): Motion on the appointment of a select committee.

I now call upon Ms Emily LAU to speak and move the motion.

#### **APPOINTMENT OF A SELECT COMMITTEE**

**MS EMILY LAU** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, I moved the motion in the hope that this Council would agree to appointing a select committee under the Legislative Council (Powers and Privileges) Ordinance to inquire into whether there are any government officials or other persons who have acted unduly, in the course of selecting the implementing organization for the Internet Learning Support Programme (ILSP), to interfere with the selection process in order to influence the selection results with a political aim of assisting the selected organization. We hope that this Council could support the conduct of an investigation by invoking the Legislative Council (Powers and Privileges) Ordinance.

I am aware that many friends in the information technology sector think that the incident of Mr Jeremy GODFREY has adversely affected the entire sector and even the reputation of the SAR. Therefore, they hope that the Legislative Council could have the chance of conducting a fair and impartial investigation. President, I hope Honourable colleagues will support the motion.

As for the background of this incident, I think the President also knows that it began in October 2009. In his Policy Address in October 2009, the Chief Executive announced that the Financial Secretary would co-ordinate efforts of

relevant bureaux to examine, through tripartite collaboration between the community, business sector and the Government, options to provide convenient and suitable Internet learning opportunities for students in need. A month later, that is in November, the Financial Secretary set up the Task Force on Internet Learning to consider how best to take the initiative forward and the resource requirements. A few months later, that is in February 2010, the Financial Secretary proposed in his Budget to allocate \$220 million to help 300 000 primary and secondary school students from low-income families in Internet learning at home through the implementation of a five-year programme. His proposal was passed by the Finance Committee on 28 May 2010. After that, the Administration began to inquire organizations of their interests through the launch of the Request for Proposals (RFP) exercise. A total of five proposals were received.

Then, an Evaluation Panel was set up. It was chaired by Mr Jeremy GODFREY, the former Government Chief Information Officer — the protagonist of the incident. The Panel he led comprised his office members as well as representatives from the Education Bureau and the Office of the Telecommunications Authority. They were responsible for giving scores after studying the submissions. During a meeting at the Legislative Council, we were told that most members of the Evaluation Panel had given their highest scores to one of the organizations, which is the Hong Kong Council of Social Service (HKCSS). Only Mr GODFREY had given an even higher score to another, which is the eInclusion Foundation Limited (eInclusion).

The eInclusion was set up jointly by the Internet Professional Association (iProA) and the Boys' and Girls' Clubs Association of Hong Kong for the purpose of bidding this project. President, the most ridiculous or absurd thing is that everyone has agreed that the HKCSS got the highest score, but it did not get the project. Mr GODFREY suggested that the HKCSS implement the project jointly with the eInclusion.

In September, Miss Elizabeth TSE, the incumbent Permanent Secretary for Commerce and Economic Development, found omissions in the evaluation process. As a result, she established a Review Committee. She also told us that one of the biggest omissions was that Mr GODFREY, being the Chairman of the Evaluation Panel, would be accountable to the controlling officer. But he himself was the controlling officer. In other words, he would be accountable to

himself. Besides, something that needed to be done was not done during the process. At last, the Evaluation Panel advised to conclude the RFP, which had yet to be completed. The relevant parties subsequently commenced an independent process to explore the feasibility of joint implementation of this project by the HKCSS and the eInclusion.

In last December, the Financial Secretary, the Secretary for Commerce and Economic Development as well as the Secretary for Financial Services and the Treasury agreed to the dual implementer approach. Instead of co-operating as intended, the two organizations were incompatible as water and fire. They could not hold any meeting. It was finally proposed that they serve as implementers in two separate geographical regions of Hong Kong.

But Mr GODFREY resigned on 5 January. Everybody was very shocked and did not know what was behind his resignation. The development has caused many Legislative Council Members and the public as well as me to wonder what has actually happened. Why did they not abide by the rules? Mr GODFREY has indicated inside and outside the Legislative Council that there was political interference and even a political assignment to enable the iProA to obtain the contract. He even quoted some bureau directors as saying that the best result was to let them deliver computers everywhere.

President, we are therefore very concerned. What is our concern? Although we have no democracy, we agree that Hong Kong has an excellent system, an uncorrupted, fair and impartial system. However, the incident has made people wonder if Hong Kong is still what it used to be. Is there anything wrong with the conduct of civil servants? Did any politically appointed official interfere with the whole process?

We have held several meetings, but the information we got was not at all sufficient. As a result, areas on which we can raise questions have become fewer. Take a look at the Select Committee to inquire into matters relating to the post-service work of Mr LEUNG Chin-man. Some Members could raise questions for half an hour or even 45 minutes without pause while we could only ask questions for a few minutes. Everybody thought that time was not enough and, therefore, information was not enough. However, many things have remained to be verified and we have to get to the roots. My question is very simple: During the selection process, why did the organization that had gotten the

highest score fail to win the bid? Why two organizations that were most unwilling to work with each other were forced to do so? Those two organizations were separated for not willing to co-operate, but why did the Chairman of the Evaluation Panel say that separation was not a good idea? Why did he say that children from low-income families would not benefit from the separation? Why did he subsequently resign?

President, you may feel like having a lot of questions to ask on hearing all this. What is even worse, President, is that information shows ..... the Policy Address in October 2009 proposed the initiative and, later, the February 2010 Budget speech announced its implementation. In November 2009, that is soon after the Policy Address was delivered, the Financial Secretary already set up the Task Force on Internet Learning to prepare for the idea and further discussion. People may say that it is nothing special because the Policy Address had announced its implementation and it is very natural to set up a task force to follow up. But during the discussion, the name of iProA popped up and the Financial Secretary thought that it was a very suitable organization. He later explained that the iProA had not taken part in the selection process. Of course, it had not because the selection process had not even started in the first place. It was six to seven months prior to the commencement of the selection process. However, the Financial Secretary already mentioned that during the discussion. What he said gave the civil servants an impression that he thought the iProA was very suitable, which led to the subsequent scenario as Mr GODFREY described: the civil servants mentioned this issue to him one after another.

We must, therefore, summon relevant officials and obtain relevant documents in order to determine the propriety. As a matter of fact, I would also like to ask the Secretary for the Civil Service as well as other officials. In fact, when we ..... on 16 June. Many civil servants, including the Former Permanent Secretary for Commerce and Economic Development (Communications and Technology), Mr Duncan PESCOD, came on that day. He personally admitted that the Financial Secretary had said so and he felt nothing wrong about it. He opined that there was nothing wrong about whichever organization the Financial Secretary liked. Mr PESCOD did not have the slightest feeling of pressure. However, other civil servants as well as former civil servants told me there was a big problem. Everybody knew that this project (worth over \$200 million) would be subject to a selection process even if it did not go through any bidding procedure. Why did the Financial Secretary

indicate his preference so soon? President, do you remember that we discussed the restaurant located at the new Legislative Council Complex during the meeting yesterday? Nobody bid for operation of the restaurant at the new Legislative Council Complex. We wanted to relax the terms and conditions to attract bidders, but some Honourable Members said that it was not feasible. They opined that we had to re-invite tenders after relaxing the terms and conditions. Therefore, President, we were not alone because the Independent Commission Against Corruption (ICAC) at that time ..... the Government has done many things and discussed with the ICAC afterwards. This is the information ICAC gave to the Office of the Government Chief Information Officer on 24 January. The Government requested the ICAC to comment on the new arrangement. President, let me read out the content in English to you: "From the corruption prevention angle, the splitting of the programme into two geographic zones not only materially changes the programme specifications but also deviates from the selection mechanism specified in the Request for Proposal documents. This could give rise to complaint of unfairness from other interested parties as they are not given the chance to compete with the two selected proponents on equal terms based on the revised programme specifications. Following that, there could be public criticism and allegations of favouritism. We also have concern on appointing the two proponents by direct negotiation without going through a due selection process. It appears to us that the Office of the Government Chief Information Officer may find it difficult to defend publicly this selection arrangement." This is what the ICAC said. It appeared that Mr GODFREY has already resigned when those comments were made.

President, not only are we concerned. The ICAC is also concerned. But who can answer it? What is the Government's reaction? Full steam ahead. It is currently going ahead. I have received an invitation from the iProA or the Fund to attend an activity in Tseung Kwan O tomorrow. I certainly cannot attend the activity because I have to attend a meeting here tomorrow. But the point is: Do you think it is fair to go ahead on this basis? The officials who came to the Legislative Council like Mr PESCOD said that there was nothing odd or unusual. They thought there was no problem. Another official is Mr Bassanio SO, the Former Deputy Government Chief Information Officer. Mr Frankie YIP, Political Assistant to the Financial Secretary, called him on the phone and enquired about the progress of the project. There is nothing wrong for him to make enquiries in this manner. Instead, he enquired whether the inclusion was alright before asking Mr Bassanio SO whether Mr GODFREY

knew of the Financial Secretary's preference? President, what can a civil servant do under this circumstance? As a result, Mr Bassanio SO told Mr GODFREY that Mr Frankie YIP had asked him whether he knew of the Financial Secretary's preference. Mr GODFREY gasped with rage upon hearing it because he had felt all along that there was a political agenda.

President, everybody is so concerned about this iProA. Why are we so concerned about it? Let us take a look at the membership of its Council: the President is Dr Winnie TANG, who is also a member of the Chinese People's Political Consultative Conference (CPPCC) Henan Provincial Committee; the Vice-President is Dr Eric K.C. CHENG, who is the son of Mr Vincent CHENG (Sham Shui Po District Council member of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)). In addition, the Director-General Duncan CHIU is a member of the DAB; the incumbent Vice-President Witman HUNG is a member of CPPCC Ningxia Hui Autonomous Region Committee; the Founding President Dr Elizabeth QUAT is a member of the DAB; the Honourable Deputy Secretary Gary YEUNG is also a member of the DAB; Dr Lee G. LAM, member of the Supervisory Committee, is a member of CPPCC Jilin Provincial Committee; Mr Benjamin FOK, also a member of the Supervisory Committee, is a member of CPPCC Beijing Municipal Committee; Mr Ricky WONG is a member of CPPCC Zhejiang Provincial Committee; Mr Samson TAM is a member of CPPCC Guangdong Provincial Committee; and Mr Joe LOK is a member of Henan Provincial Youth Federation. Besides, Council member Mr Oscar CHOW is a member of CPPCC Shanghai Municipal Committee. President, their background is really "Mainland China related". We are concerned about this kind of background. The Administration practises affinity differentiation and sets up some channels to funnel money to these people. I, therefore, hope that Members will support our investigation.

**Ms Emily LAU moved the following motion: (Translation)**

"That this Council appoints a select committee to inquire into whether there are government officials or other persons who acted unduly, in the course of selecting the implementing organization for the Internet Learning Support Programme, to interfere with the selection process to influence the selection results with a political aim to assist the selected organization, as well as related matters, and based on the results of the above inquiry, to

make recommendations on the tendering and selection procedures of government programmes funded by public moneys and other related matters; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."

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

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, fair competition has long been the cornerstone of Hong Kong's success. The Government's political accountability team and the Civil Service are committed to maintaining and bolstering this core value. I would like to reiterate that the Internet Learning Support Programme (ILSP) selection process was conducted in a fair manner and guided only by the best effectiveness for the project overall. There is no question of impropriety and political interference.

Over the past month or so, President, the Government has actively coped with the requests and work of the Information Technology and Broadcasting Panel (the Panel) with a view to helping Members and society understand all the developments of the incident. We gave a detailed account and clarified the circumstances of the incident at the Panel's special meetings on 7 and 16 June. In response to Members' request, we have arranged for the attendance of 15 officials, including the Financial Secretary, Secretary for Commerce and Economic Development and three Permanent Secretaries at the meeting on 16 June to answer Members' questions. We have also presented the information requested.

Regarding the written questions by Ms Emily LAU and Mr LEE Wing-tat in a letter to the Panel Chairman two days ago, that is Monday, we were unable to give replies due to the short notice. We note that the information requested by the two Members was submitted to the Legislative Council last Thursday. As for some other queries, we also gave an unequivocal account at the special meetings of the Panel and in the documents submitted.



All in all, the Government has been proactive in giving full co-operation in respect of the Panel's requests with a view to clarifying the incident. Prompt responses will be given to the outstanding questions raised by Mr LEE Wing-tat and Ms Emily LAU just now. The Panel and the House Committee of the Legislative Council negated the motion on setting up a select committee on matters concerning the ILSP on 16 June and 24 June respectively. In our opinion, a detailed account of the incident has been given in a sincere manner and it is not necessary for the Legislative Council to appoint a select committee for further follow-up.

Thank you, President.

### **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now suspend the Council until 9 am tomorrow.

*Suspended accordingly at fourteen minutes to Ten o'clock.*

**Annex I**

## UNIVERSITY OF HONG KONG (AMENDMENT) BILL 2010

**COMMITTEE STAGE**

Amendments to be moved by Dr. the Honourable David LI Kwok-po

ClauseAmendment Proposed

- |      |   |
|------|---|
| 5(1) | In the English text, by deleting "protection on termination" and substituting "protection against termination". |
| <br> |   |
| 5(2) | By adding "and the status of a teacher" before "after the commencement of this Ordinance".                      |

## Appendix I

## WRITTEN ANSWER

**Written answer by the Secretary for Financial Services and the Treasury to Mr TAM Yiu-chung's supplementary question to Question 2**

In response to Member's enquiry on the number of cases involving the making of false statements to claim Mandatory Provident Fund (MPF) accrued benefits on the ground of permanent departure and the number of persons convicted thereof, the relevant information provided by the Mandatory Provident Fund Schemes Authority (MPFA) is as follows:

<i>Financial Year (from 1 April to 31 March)</i>	<i>Number of summonses applied by MPFA against scheme members making false statements to claim MPF benefits on the ground of permanent departure<sup>(1)</sup></i>	<i>Number of convicted cases<sup>(2)</sup></i>
2008-2009	5	5
2009-2010	60	51
2010-2011	96	74

Notes:

- (1) A person may be involved in more than one summonses.
- (2) All cases already considered by the Court have resulted in conviction.