

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 26 June 2013

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE JAMES TO KUN-SUN

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

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

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

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

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

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN, J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., 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 KWOK-KIN, B.B.S.

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

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

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

THE HONOURABLE CLAUDIA MO

THE HONOURABLE MICHAEL TIEN PUK-SUN, B.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE NG LEUNG-SING, S.B.S., J.P.

THE HONOURABLE STEVEN HO CHUN-YIN

THE HONOURABLE FRANKIE YICK CHI-MING

THE HONOURABLE WU CHI-WAI, M.H.

THE HONOURABLE YIU SI-WING

THE HONOURABLE GARY FAN KWOK-WAI

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

THE HONOURABLE CHARLES PETER MOK

THE HONOURABLE CHAN CHI-CHUEN

THE HONOURABLE CHAN HAN-PAN

DR THE HONOURABLE KENNETH CHAN KA-LOK

THE HONOURABLE CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE LEUNG CHE-CHEUNG, B.B.S., M.H., J.P.

THE HONOURABLE ALICE MAK MEI-KUEN, J.P.

DR THE HONOURABLE KWOK KA-KI

THE HONOURABLE KWOK WAI-KEUNG

THE HONOURABLE DENNIS KWOK

THE HONOURABLE CHRISTOPHER CHEUNG WAH-FUNG, J.P.

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

DR THE HONOURABLE HELENA WONG PIK-WAN

THE HONOURABLE IP KIN-YUEN

THE HONOURABLE MARTIN LIAO CHEUNG-KONG, J.P.

THE HONOURABLE POON SIU-PING, B.B.S., M.H.

THE HONOURABLE TANG KA-PIU

DR THE HONOURABLE CHIANG LAI-WAN, J.P.

IR DR THE HONOURABLE LO WAI-KWOK, B.B.S., M.H., J.P.

THE HONOURABLE CHUNG KWOK-PAN

THE HONOURABLE CHRISTOPHER CHUNG SHU-KUN, B.B.S., M.H., J.P.

THE HONOURABLE TONY TSE WAI-CHUEN

**MEMBERS ABSENT:**

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

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

THE HONOURABLE KENNETH LEUNG

DR THE HONOURABLE ELIZABETH QUAT, J.P.

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

THE HONOURABLE RAYMOND TAM CHI-YUEN, G.B.S., J.P.  
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

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

THE HONOURABLE WONG KAM-SING, J.P.  
SECRETARY FOR THE ENVIRONMENT

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

**CLERKS IN ATTENDANCE:**

MR KENNETH CHEN WEI-ON, S.B.S., SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, DEPUTY SECRETARY GENERAL

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

**PRESIDENT** (in Cantonese): Will the Clerk please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members entered the Chamber)

### **TABLING OF PAPERS**

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

Subsidiary Legislation/Instrument	<i>L.N. No.</i>
Solicitors (General) Costs (Amendment) Rules 2013 .....	110/2013

#### Other Papers

No. 98 — Securities and Futures Commission  
Annual Report 2012-13

No. 99 — Kowloon-Canton Railway Corporation  
Annual Report 2012

No. 100 — Airport Authority Hong Kong  
Annual Report 2012/13

Report No. 19/12-13 of the House Committee on Consideration of  
Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Inland Revenue (Amendment) (No. 2)  
Bill 2013

**ORAL ANSWERS TO QUESTIONS**

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

**Problem of Children Being Left Unattended at Home**

1. **MR CHAN KAM-LAM** (in Cantonese): *President, recently, a number of parents have been separately arrested by the police for leaving children aged 11 to 14 unattended at home. Under the existing legislation, leaving young persons or children aged under 16 unattended at home may constitute a criminal offence. Some parents have pointed out that as young persons in their early teens have certain self-care abilities, they should be allowed to act alone under specific circumstances. Those parents have also pointed out that as the number of places and scope of child care services in the community at present are very limited, the support for parents is extremely insufficient. If parents have contravened the law by leaving their children unattended at home, it may result in the Social Welfare Department (SWD) taking over their children temporarily, leading to the separation of parents from their children. A survey has shown that nearly 50% of the children interviewed indicated that if their parents were penalized for leaving them unattended at home, they would feel helpless, anxious, disappointed and lonely. In this connection, will the Government inform this Council:*

- (a) *of the total number of cases in which parents were arrested in the past five years for leaving children aged under 16 unattended at home, together with a breakdown by age groups (that is, aged below eight, eight to 11, and over 11 to 15) to which the children belonged;*
- (b) *whether the Government has plans to review the existing legal provisions concerning the offence of leaving children unattended at home; if it has such a plan, whether it will consider lowering the upper age limit of children to whom such provisions are applicable; if it has no plan to conduct such a review, of the reasons for that; and*
- (c) *of the respective numbers of places and service hours of government-subsidized child care services in various districts at present; whether the Government has reviewed the supply and demand of such services, and whether it will increase the number of places of the relevant services?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, the reply to the three parts of Mr CHAN Kam-lam's question is as follows:

- (a) According to information provided by the police, the number of cases involving children left unattended at home handled by the police in the past five years from 2008 to 2012 are 40, 58, 60, 43 and 61 cases respectively. The police do not keep statistics on the number of cases by the child's age and the number of cases in which the parents were arrested.
- (b) The Offences Against the Person Ordinance (OAPO) (Cap. 212) stipulates that any person who unlawfully abandons or exposes any child, being under the age of two years, whereby the life of such child is endangered, or the health of such a child is or is likely to be permanently injured; or any person who wilfully assaults, ill-treats, neglects, abandons or exposes such a child or young person under the age of 16 years under his custody, charge or care in a manner likely to cause such a child or young person unnecessary suffering or injury to his health shall be guilty of an offence. Whether leaving a child unattended at home will constitute an offence under the OAPO depends on a number of factors and has to be assessed on a case by case basis, for example, the child's age and self-care abilities, whether the act has caused harm to the child, whether the person involved has a responsibility of care over the child, whether the person has intentionally neglected the child and is aware of the possible harm to the child caused by his act, and so on.

Currently, the arrangement addressing cases involving leaving a child unattended at home is flexible enough to allow the relevant authorities to consider various factors, including the child's age, and so on, when handling the cases concerned. We have no plan to review the relevant legislation at this stage.

- (c) To support parents who are unable to take care of their children temporarily because of work or other reasons, the SWD has all along been providing subvention to non-governmental organizations (NGOs) to run a variety of day child care services for children aged below six, including Child Care Centres which are standalone or attached to kindergartens, Occasional Child Care Services, Extended Hours Services and Mutual Help Child Care Centres. At present,



the aforementioned day-time child care services offer a total of 29 000 places across the territory, with general service hours covering the mornings and afternoons of weekdays and Saturdays.

Having noted the demand by stakeholders for child care services, we have provided more flexible services in recent years to meet the different needs of parents. In October 2008, the SWD implemented the pilot scheme of the Neighbourhood Support Child Care Project (NSCCP). Upon the review of its effectiveness and demand, the NSCCP was regularized and extended to all 18 districts in October 2011, offering a total of at least 720 places. The service operators have the flexibility to increase the number of home-based child care places on top of the minimum requirement set by the SWD to meet the actual service demand. The service hour of the NSCCP is equally flexible: from 7 am to 11 pm. In addition to Monday to Friday, it also covers Saturdays, Sundays and some public holidays.

Besides, the SWD provides After School Care Programme (ASCP) through NGOs on a self-financing and fee-charging basis, offering support service for children aged between six and 12 to enable them to receive proper care. At present, there are 145 ASCP centres operated by NGOs, providing a total of 5 500 service places. In general, ASCP centres provide services in various sessions till 7 pm or 8 pm from Monday to Friday. Individual centres may also consider extending the service hours to the evening and providing services on Saturday in response to the actual demand in individual districts to accommodate the working hours of parents.

The SWD has all along provided needy low-income families with different forms of fee waivers or subsidies. Eligible families may apply to the NGOs direct.

We have been keeping in view the service demand and operation of various day child care services. Efforts have been made to understand the local need for such services through District Social Welfare Offices. In general, there are still unused quotas for various child care services. The SWD will continue to monitor the operation of various services to ensure that they meet changing demand.

**MR CHAN KAM-LAM** (in Cantonese): *President, I believe you may not have heard of a strange phenomenon, that is, some parents would tell their children not to go home immediately after school but wander in the streets or stay in school because they are afraid that they might commit a criminal offence for leaving their children unattended at home after their children have arrived home. Although the Secretary said in part (b) of the main reply that arrangement addressing such cases is flexible enough, we have also seen that dozens of parents were subject to criminal prosecution annually over the past few years. Such a state of affairs may prompt us to consider whether the legislation concerning children under the age of 16 being left unattended at home should be reviewed because they have self-care abilities indeed. But the Secretary said that the relevant legislation would not be reviewed. May I know why the authorities still have no plan to review it when some parents were actually prosecuted for leaving their children aged between 13 and 16 unattended at home?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): In my main reply, I have clearly explained that a certain degree of flexibility has been given by the existing legislation to the relevant authorities, such as the police, which may consider the actual circumstances of the whole incident including whether the parents have deliberately, intentionally or unintentionally violated the regulation and the age of the child involved is also very important. If the child is older, such as 14 or 15 years old, and know how to take care of themselves, the situation may be different. All depends on the intention. The parents will be held responsible for intentional or willful neglect. Therefore, this is the basis of prosecution and arrest action by the police. The police will not initiate prosecution against parents who have violated the law unintentionally or due to oversight, or are not aware of the legislative requirement. Prosecution will not be initiated without justification. Generally speaking, such cases will be handled with discretion.

**MR WONG YUK-MAN** (in Cantonese): *President, Mr CHAN Kam-lam's question is actually very clear. The Secretary has pointed out in part (b) of the main reply that there is no plan to review the legislation because of the flexibility in handling these cases, thus, it is not necessary to conduct a review. However, how can parents know that the arrangement is flexible and the degree of*

*flexibility? Now, the number we can see is the number of people arrested. Parents naturally feel uneasy when they go to work every day as they do not know what to do. The Secretary is good at blowing his own trumpet. In the part (c) of the main reply, he mentioned services provided by the SWD. But the quotas are pathetically meagre.*

*President, may I ask the Secretary whether he knows what shame is? Under the policies of his bureau and departments of his portfolio, not only the elderly persons lack support, even children, especially those from poor families, have to wander in the streets or loiter on the streets doing nothing due to his social welfare policies.*

*President .....*

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

**MR WONG YUK-MAN** (in Cantonese): *Would you please ask him whether he knows what shame is? This is a very simple supplementary question.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, in my main reply, I have made it clear that firstly, we are very much concerned about the welfare of children; and secondly, the objective of the Ordinance is to protect children. Particularly, some parents are really negligent or violate the legislative provisions wilfully. Hence the protection of the well-being of children is important. Thirdly, concerning child care service places, there are more than 20 000 places for children aged between zero and six apart from thousands of places for children between six to 12 .....

**MR WONG YUK-MAN** (in Cantonese): *President, he has not answered my supplementary. My question is very simple: Does he know what shame is? He can simply answer "yes" or "no". I just want to hear this sound bite. Does he know what shame is?*

**PRESIDENT** (in Cantonese): Mr WONG, the Secretary has answered the question in his own way.

**DR CHIANG LAI-WAN** (in Cantonese): *President, I would also like to follow up the flexibility and intention mentioned by the Secretary. Although law-enforcement officers will deal with such cases with flexibility, yet sometimes it is really difficult to be certain about their approach. Take a recent case as an example. A mother had to go out to see her relatives due to some urgent matters at 9 o'clock in the evening, leaving her 11-year-old daughter unattended at home. As she was living in a "sub-divided unit", she asked her neighbour to help take care of her. After her departure, her daughter was found left unattended at home. The police arrested her after receiving report of the case. In accordance with the legislation, the police have to enforce the law if a child is found left unattended at home and will certainly arrest the mother. So, too much flexibility should not be allowed .....*

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

**DR CHIANG LAI-WAN** (in Cantonese): *..... I recommend that the Secretary review the Ordinance .....*

**PRESIDENT** (in Cantonese): Dr CHIANG, please come to supplementary question at once.

**DR CHIANG LAI-WAN** (in Cantonese): *Sorry. What I wish the Secretary to review? I know that in many countries, children are divided into different groups by age in respect of such problems as child being ill-treated, neglected or left unattended at home. Could the Secretary conduct a review of the requirement that children below a certain age should not be left unattended at home? Currently, it is provided in law that children aged under 16 should not be left unattended at home. But we know that nowadays 16-year-old .....*

**PRESIDENT** (in Cantonese): Dr CHIANG, you are making comments. You have asked your supplementary, so please sit down and let the Secretary answer it.

**DR CHIANG LAI-WAN** (in Cantonese): *Yes, thank you.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, Members might have a little misunderstanding. In the whole process of a child being left unattended at home, the law-enforcement agency will consider whether the parent or carer has wilfully ill-treated, neglected or abandoned the child. All these intents will be considered by the law-enforcement agency, which will not initiate prosecution against the parents simply because their children have been left unattended at home. Upon arrival at the scene, the police will first of all ascertain what has happened by interrogating the relevant parties. In many cases, the police, out of goodwill, may advise the parents not to leave their young children unattended at home in order to avoid accidents, such as burns, electric shock, and so on. They do not have any intention to arrest the parents. In the past, there were some cases in which the parents had really wilfully neglected their children who were left unattended so that they could go to Macao for gambling. We will not tolerate such cases. Therefore, different cases are handled in different ways depending on the actual circumstances.

In my main reply, I have stated clearly that a lot of factors will be taken into account and the age of the children is also crucial. If older children who have self-care abilities are involved, the situation may be different. Furthermore, if the parents do not intend to ill-treat or wilfully neglect their children, the police will not enforce the law in a rigid manner. They will usually offer advice and explain the case to the parents. Follow-up action will also be taken by our social workers.

**MR STEVEN HO** (in Cantonese): *President, may I ask the Secretary whether he has noticed the phenomenon of many children aged 16 or under found wandering in the streets alone although parents are not allowed to leave children aged 16 or under unattended at home? Many public housing residents have even told us*

*that two or three children aged between 10 and 16 are always found hanging around in their housing estates during long holidays without the company of an adult. May I ask the Secretary how this problem will be dealt with, and whether there is any relation between such problem and the requirement that children should not be left unattended at home?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, it is difficult for us to ascertain whether there is any correlation between the problem of teenagers hanging around in the streets and the requirement that children should not be left unattended at home. But I believe we should not worry too much about the legislation because the intent of the Ordinance is to protect children from abuse. As regards the problem of teenagers hanging around in the streets mentioned by Mr HO, we have set up 100-odd youth centres in many different locations, apart from community offices and Integrated Family Service Centres in many districts. Assistance will be provided by such facilities. Kaifongs can also contact us and let us know the actual situation if necessary.

**MR IP KWOK-HIM** (in Cantonese): *President, the Secretary mentioned in part (b) of his main reply that "Whether leaving a child unattended at home will constitute an offence under the OAPO depends on a number of factors", which was also reiterated in his replies to some supplementary questions. But the problem is whether the criterion of "under the age of 16 years" is realistic given the current social development or free flow of information. The parents are afraid of being prosecuted, and in reality, some parents have been prosecuted or forced to be separated from their children for several days under similar circumstances. In view of the current situation, does the Secretary think that it is necessary to conduct a review of the age limit in a serious manner?*

*At present, society as a whole is not just a single .....*

**PRESIDENT** (in Cantonese): Mr IP, you have asked your supplementary question, please sit down. Secretary, please reply.

**MR IP KWOK-HIM** (in Cantonese): *Thank you, President.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I have clearly stated that the purpose of the Ordinance is to protect the well-being of youngsters and children under the age of 16. This is the most important objective because once prosecution is initiated against child abuse, we need a legal basis to do so. For this reason, such protection should be provided for by legislation.

Just now some Members asked whether there were cases involving older teens. In my main reply, I have mentioned that the police will not enforce the law in a rigid manner or inflexible way. They will consider the actual situation or case, such as whether the parents have intentionally ill-treated, willfully neglected or failed to take care and look after their children. If the children involved are older and have better self-care abilities, the police will not enforce the law hastily. Generally, they will give advice, gain some understanding of the case or make referral to social workers.

**MR WONG KWOK-HING** (in Cantonese): *President, in the part (c) of the main reply, the Secretary mentioned the Neighbourhood Support Child Care Project (commonly known as "home-based child care service"), which is very popular because flexible child care service can be provided to families on the one hand and employment opportunities can be provided for some housewives on the other. However, according to the Secretary's report, only 720 service places are provided in a total of 18 districts, representing an average of only 40 service places in each district. Therefore, may I ask the Secretary through the President whether a review of this popular project will be conducted and service places will be increased in the light of the actual situation of each district? Although the Secretary said in the main reply that the service operators have the flexibility to offer the number of home-based child care places which are not subject to any limit, yet there are only 40 places in each district. Is this figure not too small? Hence, I hope the Secretary will undertake that a review would be conducted and service places increased according to the actual circumstances.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thanks to Mr WONG for his positive comment on the NSCCP, which is indeed very popular. A review will certainly be conducted from time to time in the light of the actual circumstances. I remember that it was only a pilot scheme when it was first launch in 2008 and extended to the whole territory in 2011. I undertake to closely monitor the progress of the project and make appropriate adjustments, particularly in respect of service quotas which will be expanded if necessary.

I thank Mr WONG for his opinion.

**DR HELENA WONG** (in Cantonese): *President, we are most concerned about whether children are cared for. I believe parents also want to take care of them. However, the Secretary should also know that the parents have to work very hard in order to earn a living. Hence, although the authorities are obliged to protect minors and adolescents, the crux of the problem is whether the Government has implemented any measures to help parents to relieve the burden of earning a living and taking care of their children at the same time. The current problem lies in the fact that child care services provided by the Government are inadequate. Hence, the focus should be placed on how to strengthen the provision of such services. However, the current-term Government has not done anything in this regard. Will the Secretary consider how best the parents can be help?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): We are also very much concerned about after-school care and child care services. These are one of our priorities, and I have repeatedly emphasized that we wish to make continuous progress in this regard. As I have explained clearly in the main reply, 29 000 places of day care services such as Child Care Centres and Occasional Child Care Service are available for children aged between zero and six. There are also home-based child carers at the district level to provide flexible services. For primary school children aged between six and 13, the Government has also offered ASCP, for which more than 5 000 places are available. While there are still unused places, around 86% of the quota has been taken up. For users with financial difficulties, about 1 600 places are available on a *pro bono* basis. We urge parents to seek help from our colleagues or NGOs at the district level when necessary since there are remaining quotas in the districts can provide assistance.



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

**DR HELENA WONG** (in Cantonese): *President, I would like to follow up. Many women in the district .....*

**PRESIDENT** (in Cantonese): Dr WONG, please repeat the part of your question that you think the Secretary has not answered.

**DR HELENA WONG** (in Cantonese): *President, I asked the Secretary how best those women and families can be helped. But the Secretary said that there are remaining quotas .....*

**PRESIDENT** (in Cantonese): Dr WONG, the Secretary has already answered your question. If you think there is any inadequacy in the policy, you may follow up in the relevant panel.

**MR PAUL TSE** (in Cantonese): *President, I understand the authorities have expressed that their goal is not really to initiate prosecution against those parents. But I am surprised that no relevant figures are included in part (a) of the main reply. If no figure is provided, how could we know the percentage of cases in which the authorities have to initiate prosecution reluctantly in handling such cases? The Secretary mentioned "the authorities" in part (b) of the main reply. Apart from the police, do "the authorities" include the SWD as well?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): First of all, the main reply has only provided figures from the police. Since Mr CHAN's question is about the number of cases in which parents are arrested, it is a question asked from the perspective of criminality. As we know, the OAPO does not contain any provision relating to "leaving children unattended at home", so the police cannot provide any breakdown of the relevant figures.

Nevertheless, the police understand that we wish to know the situation and have promised to make some effort in this aspect after the meeting. Perhaps we should give some time to the police to do analysis with the computer because they do not have a breakdown of these figures.

But regarding the SWD, I can provide some figures for Members' reference. In 2012, for instance, amongst 894 cases of child abuse being reported for the first time, there were 64 cases of neglect (lack of care). It was a fairly small proportion to have only 64 cases of neglect out of 894 cases of child abuse. In those cases, many parents did not know what to do or committed the offence due to fleeting oversight. Hence, we would offer advice. Where it is within the purview of police duties, the police will certainly follow up. Amongst the 894 cases, only 64 involved leaving children unattended at home or being neglected.

**MR PAUL TSE** (in Cantonese): *Speaking of enough flexibility in handling those cases, should the involvement of the SWD be brought in apart from the police?*

**PRESIDENT** (in Cantonese): The Secretary has answered your question. The Bureau has heard Member's views. Second question.

### **Information Security in Hong Kong**

2. **MR CHARLES PETER MOK** (in Cantonese): *President, it has been reported that the National Security Agency of the United States has been hacking into a number of computer network backbones on the Mainland and in Hong Kong since 2009. Some people of Hong Kong have expressed worries that their communication information may have been acquired by the United States Government as they have used the services of such computer networks. Regarding information security in Hong Kong, will the Government inform this Council:*

- (a) *whether it has assessed if there is sufficient professional expertise or capability within the Hong Kong Government to detect any activities of the governments and organizations of foreign countries (for*

*example, the United States) attempting to hack into the Government's or personal computer systems in Hong Kong; if the assessment outcome is in the affirmative, of the details; if it is in the negative, whether the authorities concerned will conduct a review of the level of information security in Hong Kong; given that a large number of Hong Kong people have been using Internet services (for example, social networking websites) the servers of which are located in the United States, whether the authorities concerned will follow up if the United States Government has acquired the information of such users;*

- (b) *whether government departments have previously requested any local or foreign Internet service providers (ISPs) to allow them to get hold of information directly from the servers, systems or network of such service providers, and whether those departments have ever obtained Hong Kong people's information on the Internet (for example, photos, audio and visual messages, emails, voice, files, login accounts, and so on) on their own or through co-operation with the governments or organizations outside Hong Kong (for example, those of the United States); if they have, of the reasons for that and the details; if not, whether the Government can guarantee that it will not collect such information in any form in future; and*
- (c) *as some members of the public have pointed out that the existing Interception of Communications and Surveillance Ordinance (ICSO) has never been amended and is fraught with loopholes (for example, the definition of public security being too wide, the absence of penalty for illegal interception of communications by public officers, and so on), which have caused worries about personal privacy, of the timetable set by the Government for introducing legislative amendments to this Ordinance; if a timetable is not available, of the reasons for that; whether the Government has assessed if the existing legislation is adequate for regulating acts of interception of communications (for example, industrial espionage, and so on) by non-governmental organizations or individuals; if the assessment outcome is in the negative, whether the Government has any plan to amend the existing legislation or enact new law to regulate such acts; if it has, of the details; if not, the reasons for that?*

**SECRETARY FOR SECURITY** (in Cantonese): President, there are several areas of concern raised in the Member's question, including expertise and competence of government departments in information security, their capability in combating technology crimes, and regulation of acts of interception of communications and covert surveillance by non-public officers. These issues are related to the policy areas of the Security Bureau, the Commerce and Economic Development Bureau and the Constitutional and Mainland Affairs Bureau. Our consolidated reply is as follows:

- (a) The Government attaches great importance to information and data security, and has implemented various measures for the security of computer systems within the Government and personal computer systems, as well as combat of technology crimes.

The Office of the Government Chief Information Officer (OGCIO) has implemented the following measures to maintain its network security and protect against cyber intrusions and attacks:

- (i) In accordance with international standards and industry best practices, bureaux and departments (B/Ds) have formulated and implemented their departmental information security policies, strictly carried out system security management procedures, conducted regular security risk assessments and third party audits, and continuously enhanced their security management systems and facilities.
- (ii) For the Government's Central Internet Gateway System, apart from adopting advanced information security technologies in the industry, we also implement stringent security control, monitoring and detection procedures and measures to ensure its normal operation as well as prevent cyber attacks and intrusions. The OGCIO also conducts incident response and system recovery drill exercises on a regular basis to ensure that the relevant systems and personnel have the response capability to promptly and effectively tackle security and service incidents including cyber attacks. In case intrusion attempt is detected, the OGCIO will immediately conduct investigation and take action to combat the attack.

- (iii) The Government places heavy emphasis on the ongoing enrichment of its professionals' knowledge and skills so that they can perform their work effectively. At present, relevant professionals working in various B/Ds have already obtained internationally-recognized information security professional certificates (such as the Certified Information Systems Security Professional of the International Information Systems Security Certification Consortium, Inc. and the Certified Information Systems Auditor of the Information Systems Audit and Control Association).
- (iv) The OGCIO actively participates in the activities of international organizations, including the Asia-Pacific Economic Cooperation, the International Organization for Standardization and the Forum of Incident Response and Security Team, so as to keep abreast of the global intelligence, the latest trends of protection solutions and the best practices of information security.

Regarding the security of personal computer systems, the OGCIO actively works with the industry and stakeholders to promote the importance of protecting computer systems and cyber security among the business sector and the community, and raise public awareness and knowledge on the protection of computer systems and information. Moreover, the Hong Kong Computer Emergency Response Team Coordination Centre provides the local Internet community with computer security incident related services, including co-ordinating actions in response to computer security incidents and enhancing public awareness on Internet security by disseminating the latest information security news and alerts via different channels, such as websites, emails, mobile applications, and so on.

In respect of combat of technology crimes, the Hong Kong Police Force (the police) possess the expertise and competence of international standards.

To further strengthen Hong Kong's defence against various types of cyber attacks, the police set up the Cyber Security Centre in December 2012. Through strengthening communication and co-ordination between the police and relevant stakeholders, conducting thematic researches and auditing network security measures, the Centre aims to prevent and enhance the response to possible attacks against the information system network of critical infrastructures. We believe that the Centre is able to step up our response to and defence against cyber attack incidents.

Same as other members of the public, we are very concerned about the extensive media coverage of the hacking of local computer systems. The HKSAR Government has formally written to the United States Government requesting explanation on earlier media reports about the hacking of computer systems in Hong Kong by United States government agencies. It will continue to actively follow up on any incidents related to intrusion of the rights of institutions or individuals in Hong Kong.

- (b) B/Ds did not request any local or foreign ISPs to allow them to get hold of information directly from the servers, systems or network of such providers. In carrying out their duties, B/Ds may request information or solicit co-operation from relevant persons or organizations (including ISPs) as and when necessary in accordance with the relevant laws and established procedures or guidelines.
- (c) This question concerns local information security and overseas hackers' intrusion into our computer systems and protection of personal privacy as well as regulation of interception conducted by non-government organizations or individuals.

Section 161 of the Crimes Ordinance (Cap. 200) (access to computer with criminal or dishonest intent) and section 27A of the Telecommunications Ordinance (Cap. 106) (unauthorized access to computer by telecommunications) are laws in Hong Kong which are primarily used for tackling hackers' illegal intrusion into computer systems.

The ICSO is unrelated to the concern raised in the question. The purpose and designated scope of the ICSO is to regulate lawful interception of communications by law-enforcement agencies in Hong Kong for the prevention and detection of serious crimes and the protection of public safety. The ICSO makes stringent provisions for a complicated and sophisticated mechanism, and law-enforcement agencies are required to comply with such stringent procedures and requirements by filling in documents, submitting applications to panel judges and carrying out such activities according to the authorizations granted. The ICSO, however, is not applicable to non-public officers.

If non-public officers conduct interception, such acts may constitute an offence under section 24 of the Telecommunications Ordinance (wilfully intercepting a message by a telecommunications officer) or section 27 of the Telecommunications Ordinance (damaging a telecommunications installation with intent by any person). Cases involving personal data collection will also be subject to the Personal Data (Privacy) Ordinance.

On regulating acts of interception of communications by non-governmental organizations or individuals, relevant Policy Bureaux of the HKSAR Government will consider whether there is a need to strengthen protection on top of the existing legal basis, taking into account other policy considerations such as safeguarding freedom of the press.

**MR CHARLES PETER MOK** (in Cantonese): *President, the Government did not give any reply to a part of my main question.*

*I asked the Secretary whether or not the Hong Kong Government had previously requested any local or foreign ISPs to allow it to get hold of information directly from the servers of such service providers and whether the Government could guarantee that it would not collect such information in any form in future. The Secretary did not give any reply to this. However, President, since I can only ask one supplementary question and since I believe*

*that he is not going to give me a direct reply anyway, I am not going to ask this supplementary question.*

*I wish to ask this: The Secretary said in the main reply that apart from the ICSO, there is also such legislation as the Telecommunications Ordinance that regulates the intrusion of non-public officers into computers or systems. Nevertheless, many experts have pointed out that those provisions actually lag far behind the development in technology, particularly because of the inability to recognize various types of electronic messaging technology, so there is difficulty in dealing with them and there are also problems of co-ordination between these two Ordinances. In view of this, my supplementary question is: Has the Communications Authority or the Government ever assessed the effectiveness of this Ordinance? Can some figures be provided to tell us the numbers of prosecutions against the interception of communications in accordance with the relevant provisions of the Telecommunications Ordinance in the past year or three years and a breakdown of such cases?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Security, please.

**SECRETARY FOR SECURITY** (in Cantonese): President, I have some information that can be provided to the Honourable Member. Between 2008 and 2012, prosecution was instituted in accordance with section 161 of the Crimes Ordinance (Cap. 200) in 152 cases and among them, conviction was secured in 122 cases. Take 2012 as an example, there were 39 cases in which prosecutions were instituted and the number of cases in which conviction was secured stood at 32. As regards the classification of technology crimes, the cases are classified into crime related to online games, online commercial fraud, illegal access to a computer system, and so on. Concerning Mr MOK's question just now on what actions will be taken, I can say that in 2012, for example, our crime detection rate in this regard was about 15.4%.

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



**MR CHARLES PETER MOK** (in Cantonese): *I am not asking about the criminal law but the Telecommunications Ordinance. May I ask Secretary Gregory SO to give a response?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Concerning the record on prosecutions instituted in accordance with sections 24 and 27 of the Telecommunications Ordinance, so far, no criminal prosecution has been instituted in accordance with section 24 and as regards section 27, from 2002 to 2004, there were a total of three cases of theft of subscription television signals in which conviction was secured but in these cases, none of them involved the interception of phone calls and voice messages.

**MR CHARLES PETER MOK** (in Cantonese): *President, if the relevant figures are like that, it means there is no such thing as telephone tapping in Hong Kong. Therefore, President, I hope that the Government will look into this in earnest.*

**MR DENNIS KWOK** (in Cantonese): *Recently, an official of the White House in the United States said recently that if the Hong Kong Government did not extradite and repatriate Edward Joseph SNOWDEN immediately, it meant that the Hong Kong Government was not committed to the rule of law. However, we can see that most ironically, it is precisely the American Government that is not committed to the rule of law and most hypocritical in this incident. In the reply given by the Secretary, it can be seen that the SAR Government has formally written to the American Government to seek explanations on this matter. If the reply that you receive is unsatisfactory or unconvincing, will you take any further action and what will it be?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Security, please.

**SECRETARY FOR SECURITY** (in Cantonese): President, Hong Kong is an international financial centre and the coverage of its networks is also very extensive. It can be said that it is at the top globally. All commercial

organizations and members of the Hong Kong public use such indispensable tools as computers to obtain various types of information daily. The free flow of information, personal privacy and network security are crucially important. Concerning Mr KWOK's supplementary question, it was reported in the media that certain computer systems in Hong Kong had been hacked by an agency of the American Government and the SAR Government takes this matter very seriously. The Security Bureau has formally written to the United States on 21 June to seek explanations from it. So far, the American Government has still not given any reply and we are very disappointed. It is hoped that the American Government could give a satisfactory and full account to Hong Kong people as soon as possible. After the SAR Government has received a reply, no matter how the reply is like, we will continue to take vigorous follow-up actions.

**MR TONY TSE** (in Cantonese): *President, computer network security is a great concern to all people and now, the public are also very worried about this. Just now, in relation to the security of personal computer systems, the Secretary mentioned the Hong Kong Computer Emergency Response Team Coordination Centre (HKCERT). Is the function of the HKCERT one of co-ordination or does it perform other functions? May I ask the Secretary if the HKCERT has made any recommendations or taken any measures to uphold network security in Hong Kong, including whether or not it has recommended that ISPs adopt measures conforming to high specifications or standards, so as to defend computer networks against hackers?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Commerce and Economic Development, please.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): The HKCERT is a body under the Hong Kong Productivity Council dedicated to providing services in relation to computer security incidents. The HKCERT provides the Internet community with computer security incident-related services, including issuing alerts when threats to computer security are detected and enhancing public awareness of Internet security. Of course, if ISPs or service providers have detected problems, they will also get in touch with the HKCERT to discuss counter-measures and consider what alerts to

issue and how to enhance the public's knowledge of security when using computers. It will also make corresponding technical adjustments in response to various incidents.

Of course, the Communications Authority also liaises closely with ISPs to ensure that they adopt the most advanced technology and that they have done their best in ensuring network security.

**DR LEUNG KA-LAU** (in Cantonese): *As far as I know, according to many laws in Hong Kong, the Government or overseas governments actually enjoy immunity, that is, diplomatic immunity. May I ask the Secretary if the various Ordinances mentioned by him in his reply can regulate the Hong Kong Government or its organizations, the Central Government or its organizations, or other overseas governments and their organizations? If they are involved in this kind of acts, have they broken the law or do they enjoy immunity?*

**SECRETARY FOR SECURITY** (in Cantonese): To my understanding, the Member's supplementary question is divided into two parts. The first part asks whether or not the existing laws in Hong Kong can regulate the actions of overseas governments in Hong Kong and the second part is about the Central Government. Concerning the Central Government, it is stipulated clearly in the Basic Law that the personnel of the Central Government shall abide by the laws of Hong Kong.

As regards overseas governments, in the case of diplomatic missions formally stationed in Hong Kong, under international conventions, they are entitled to some kinds of immunity. Of course, whether or not certain actions are exempted on account of such immunity can only be ascertained after examination of specific incidents, so we cannot make any generalization.

**DR LEUNG KA-LAU** (in Cantonese): *With regard to this incident, does the American Government enjoy any immunity?*

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

(The Secretary for Security shook his head indicating that he had nothing to add)

**MR CHRISTOPHER CHEUNG** (in Cantonese): *According to the disclosures by SNOWDEN, who is an employee of the Central Intelligence Agency of the United States, the intrusion into and surveillance of our networks by the United States are arguably all pervasive. As an international financial centre and commercial city, many commercial and trading activities are carried out in Hong Kong daily and they involve quite a lot of commercial secrets. Moreover, the conduct of transactions and working with the help of networks is also a major trend. May I ask the Government how it can ensure, or prevent us — in particular, small and medium enterprises (SMEs) — from becoming the victims of commercial espionage? Second, what were the figures on the complaints in this regard in the past three years and the detection rates?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Commerce and Economic Development, please.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): The subject matter raised by Mr Christopher CHEUNG precisely highlights the importance of information security. The OGCIO undertakes the promotional work in this regard and the business sector must also make some basic efforts. If SMEs fail to do a proper job of the basic security for their systems, they will be vulnerable to cyber attacks or hacking. Therefore, we have been making promotion efforts in this regard continuously.

In particular, SMEs also need to protect themselves in their way of using information by taking basic precautions, for example, not opening suspicious emails or attachments too readily and installing or upgrading to the latest version of firewalls. Since the ways of cyber attacks are ever-changing, it is necessary to acquire the latest information technology and the HKCERT mentioned by me just now will also notify the sector, including SMEs, of the latest information technology or alerts, so that they can do a proper job in protecting themselves.

**PRESIDENT** (in Cantonese): Secretary, will you provide the figures requested by the Member?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): For the moment, I do not have the figures on complaints in this regard, so I will give a reply in writing after the meeting. (Appendix I)

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

### **Timing for Delivering Policy Address and Budget**

3. **DR KENNETH CHAN** (in Cantonese): *In her earlier letter to the President of the Legislative Council, the Chief Secretary for Administration has indicated that the Chief Executive will deliver his next Policy Address in January next year, which will be followed by the Financial Secretary's Budget in late February or early March. Such an arrangement will be adhered to for the rest of this term of the Government. In this connection, will the Government inform this Council:*

- (a) *given that due to the close proximity of the dates for delivering the Policy Address and the Budget this year, the Government had jointly conducted the public consultation exercises for these two important policy papers last year, whether the Government will continue to adopt the same arrangement next year; if it will, of the justifications for that; whether the Government will take measures to ensure that the relevant consultation exercises will not place emphasis only on one of the two documents, and whether it will consider conducting separate consultation exercises for the two documents; if it will consider doing so, of the details; if not, the reasons for that;*
- (b) *as the dates for delivering the next Policy Address and the next Budget will be quite close, whether the Government has assessed, when the Government decides to make relatively substantial amendments to certain policies or measures in the light of the*

*public's responses to the Policy Address, if the Financial Secretary will have sufficient time to revise the draft Budget in order to allocate public resources in tandem with the relevant amendments; if the assessment outcome is in the negative, how the Government can respond to the aspirations of the public in the Budget, and whether it will, for such reason, refuse to respond to the views or suggestions from the public on the Policy Address; and*

- (c) *whether the Government will consider consulting the public and this Council on the dates for delivering the Policy Address and the Budget, so as to avoid jeopardizing the relationship between the Executive Authorities and the Legislature; if it will, of the details; if not, the reasons for that?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, the Chief Executive has decided to deliver his next Policy Address on 15 January 2014, and that the Financial Secretary will announce the Budget for 2014-2015 in the following month on 26 February. As mentioned in my letter to the President dated 3 June, the Chief Executive will continue to deliver his Policy Address in January, followed by the Financial Secretary's Budget in late February/early March, for the rest of this term of the Government.

The Policy Address serves to announce the key policy initiatives for the coming year with a view to enhancing public understanding of the Government's policy directions and responding to people's aspirations towards various policy areas, while the Budget plays an important role in taking forward the Policy Address by making relevant financial and funding arrangements. The Policy Address and the Budget are, therefore, closely related. The back-to-back delivery of these two documents strengthens the co-ordination and interaction between policy formulation and budgetary planning, and facilitates more comprehensive discussions among different sectors of the community. In addition, such an arrangement provides the public with a holistic picture of the Government's comprehensive policy initiatives, set against the overall economic situation and relevant fiscal measures. A smaller time gap between the delivery of the two documents also ensures early implementation of the initiatives announced in the Policy Address that require new funding in the following financial year.

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

- (a) As I have mentioned earlier, the Policy Address and the Budget are closely related. A smaller time gap between the delivery of the two documents enables better co-ordination between policy formulation and budgetary planning. Different sectors of the community are in a better position to ponder on and discuss in a comprehensive manner policy initiative proposals, having regard to public finance priorities. As such, we will continue to conduct joint public consultations on the Policy Address and the Budget as a whole, so that the Government can gauge public opinion extensively.

In fact, according to our experience in public consultation, members of the public and different sectors of the community, when considering and putting forward their comments, usually bring up policies or measures together with proposals for relevant funding or budgetary requirements. Last year's combined consultation exercise had taken due account of the proposals on the Policy Address and the Budget impartially from different sectors of the community, including Members of the Legislative Council and the general public. A combined public consultation exercise for the Policy Address and the Budget not only helps members of the public express their views in a holistic manner, but also enables the Government to co-ordinate policy formulation and budgetary planning. Arrangements for the public consultation and its progress will be further enhanced. The communication with Members of the Legislative Council and the general public will be strengthened whenever necessary, and the public consultation exercise will be widely publicized to encourage more people to come forward with their views.

- (b) The Government will commence its extensive consultation several months before the delivery of the Policy Address and the Budget. In finalizing their contents, views collected in the course of public consultation as well as proposals received through other channels will be thoroughly considered, and various factors carefully weighed. The Policy Address puts forward major policy initiatives, whilst the Budget lays out the financial arrangements for their

implementation. In the course of public consultation, all sectors of the community are, therefore, encouraged to actively express their views and hold extensive discussions on the Government's policy objectives and public resource allocation for the following year. The Government attaches great importance to the views of the community, including those on the Policy Address and the Budget. The Government will humbly listen to and duly consider the proposals and views received at any stage and will take them as reference for policy implementation.

- (c) We have a high regard of the Legislative Council and cherish as much the executive-legislative relationship. That was why when we had come to know that some Members had a different view on the arrangements for the delivery of the Policy Address this January, I availed myself of the opportunity at the special meeting of the House Committee held in March this year to express my willingness to hear Members' views on the arrangements regarding the delivery of the next Policy Address, including the timing. No Member raised any views on this subject at the meeting. To allow adequate time for Members and the Secretariat of the Legislative Council to plan for their legislative work for the following year, the Government, upon confirmation, informed Members through the President of the Legislative Council and the Chairman of the House Committee in early June, of the updated timing for delivery of the next Policy Address and the Budget and the arrangements for the rest of this term of the Government. In my letter to the President of the Legislative Council, I expounded the justifications and merits of this arrangement, including the narrowed time gap between the delivery of the Policy Address and the Budget, and the early implementation of the initiatives announced in the Policy Address that require additional funding. I believe such an arrangement is in line with the general public interest in that the community will benefit from the new policy initiatives as early as possible.

**DR KENNETH CHAN** (in Cantonese): *I wonder if the Government respects the aspirations of the public, or it is feeling good about the arrangement or just being self-centred. President, I disagree with the arrangement of combining the two*



*consultations into one. If the public opinions show any reaction during the preparation of the Policy Address, how will the Government have adequate time for adjustment and reflection, or else it will have to force through the Policy Address or compel the community to "swallow" the Policy Address or confront the Government till the end? Actually, this is a question of good administration.*

*President, my supplementary question is very simple. What should the community do to make LEUNG Chun-ying change his mind and conduct separate consultations on the Policy Address and the Budget afresh? Should we wait until his premature resignation before we can have a chance to restore chaos to order?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Members can see that there is usually a time gap of at least six weeks between the delivery of the Policy Address and the Budget. As rightly pointed out by Dr CHAN, I respect public opinions, whereas the making of responses is not about timing but the sincerity in question. Hence, even if joint consultations on these two important documents are conducted, and the time gap between their delivery is shortened so that they will be announced back to back, the SAR Government will not be affected when it comes to respecting the public opinions and giving sincere responses.

**MR ALAN LEONG** (in Cantonese): *I would like to follow up part (c) of the Chief Secretary's main reply. She mentioned that she had availed herself of the opportunity at the special meeting of the House Committee held in March this year to hear Members' views. Just now, I looked up the minutes of meetings of the House Committee of the Legislative Council. I believe the Chief Secretary was referring to the meeting on 22 March. President, the meeting focused on discussing poverty alleviation and the population policy. The agenda absolutely did not mention anything about consulting Members on the arrangements for the delivery of the Policy Address and the Budget.*

*President, may I ask the Chief Secretary whether or not the Government under the leadership of LEUNG Chun-ying will adopt this surreptitious tactic for the rest of this term of the Government — though no one knows how long it will last?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Regarding the special meeting of the House Committee arranged for that day, after discussion with the Chairman of the House Committee, I made it very clear that I was more than willing to listen to any views put forward by Honourable Members on the timing of and arrangements for the delivery of the Policy Address this year, other than discussions on poverty alleviation and the population policy which is under my charge. To my memory, the House Chairman reminded Members present at the commencement and conclusion of the meeting that day that there was one more agenda item, that is, the Chief Secretary availed herself of the opportunity at the special meeting of the House Committee to hear Members' views on the arrangements regarding the delivery of the Policy Address. But unfortunately, no Member raised any relevant views at the meeting. If Members really felt strongly about this, I trust that ample time was available after the meeting, and Members would definitely strive to relay their views to the Government.

**MR RONNY TONG** (in Cantonese): *President, it is the bounden duty of the Government to listen to views. However, the Government insists on holding joint consultation exercises for the first time since the reunification. Chief Secretary, you had better consider doing away with the Budget. Not only is this the simplest solution, but it also obviates the need for the Legislative Council to spend so much time on discussions.*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, the purpose of compiling the annual Budget is to provide financial resources for the SAR Government to ensure that public services can proceed properly. I believe Mr Ronny TONG was only joking just now.

**MR CHAN CHI-CHUEN** (in Cantonese): *President, I think the Chief Secretary has learnt to master the "hypocritical rhetoric" of LEUNG Chun-ying. Just now, she pointed out in the main reply that a smaller time gap between the delivery of the two documents could ensure early implementation of the initiatives that required new funding. In fact, the menu used to be announced at 9 am, and the meal commenced at 1 pm. Now, the menu is announced at 12 noon, and the meal began at 1 pm. First of all, I must point out that the timing for the meal*

*has not been brought forward. This means that Hong Kong people will not be allocated flats earlier. Likewise, elderly persons will not be granted subsidies earlier. Last year, LEUNG Chun-ying attributed the late delivery of his homework to the need to fight for more time for communication due to the change of the term of the Government and that of the Legislative Council simultaneously. President, next I would like to raise my supplementary question.*

*The Chief Secretary stated in the main reply that "the back-to-back delivery of these two documents strengthens the co-ordination and interaction between policy formulation and budgetary planning, and facilitates more comprehensive discussions among different sectors of the community. In addition, such an arrangement provides the public with a holistic picture of the Government's comprehensive policy initiatives, set against the overall economic situation and relevant fiscal measures". Why did the Chief Secretary, who has served three terms of the Government over a period of more than three decades, suddenly come to realize the merit of a smaller time gap between the delivery of the two documents? Did she ever raise this proposal with the SAR Government over the years?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): It is probably because Mr CHAN did not join the Legislative Council until this term that he is unaware that it is not the first time that the Policy Address is delivered in January to achieve a smaller time gap with the announcement of the Budget. In 2003, 2004 and 2005, the Policy Address was delivered by the Chief Executive in January, to be followed by the Financial Secretary's Budget in February or March.

As pointed out by Mr CHAN, I have been working in the Government for more than three decades and have participated in drawing up budgets for a long time. I can tell Members that none of the arrangements are perfect. They each have their merits and demerits. As stated by Mr CHAN, insofar as this year's Budget is concerned, our justification at that time was our consideration of the arrangements for the change of the Government. After implementation, however, it is found that there are merits to do so. As a result, the Chief Executive has decided that this arrangement will be adhered to within his term of office.

**DR KWOK KA-KI** (in Cantonese): *President, I do not know if "one takes on the colour of one's company". We find the Chief Secretary's reply, which is calling a stag a horse, most disappointing. I do not know how to do calculations. In the past, two separate consultations were carried out for the Budget and the Policy Address. Although it was a show in which a meeting was held with no more than 10 Members for just an hour or so to hear their views for a while, the two consultations are now combined into one consultation in which only the Chief Executive or the Financial Secretary will be present to consult Members. Now the Chief Secretary is telling us that the fewer consultations the better. In other words, the Government will be more sincere if the two consultations are combined into one. I really do not know how to teach children what addition and subtraction mean .....*

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

**DR KWOK KA-KI** (in Cantonese): *President, my supplementary question is: Is the Government telling Hong Kong people that it lacks sincerity in communicating with the Legislative Council, and so the relationship between the executive authorities and the legislature will only take a turn for the worse rather than better?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): I have stated in the main reply that arrangements for the public consultation and its progress will be further enhanced and mentioned in particular that the communication with Members of the Legislative Council and the general public will be strengthened whenever necessary.

Nevertheless, I wish to clarify that the scope covered by the consultation conducted on the Policy Address and the Budget in 2013 was even more extensive. Hence, the substance of the consultation and the number of persons we have got in touch do not hinge on the consultation conducted by the Chief Executive to be followed by another one hosted by the Financial Secretary. It is the actual substance of the consultation that matters. According to our previous experience, for instance, a total of 58 consultative sessions were held. I believe this figure has far exceeded the number of previous consultative sessions held on

the two documents. Furthermore, many of the 58 consultative sessions were attended by both the Chief Executive and the Financial Secretary. Some of them were chaired by me, too. Hence, judging from the number of consultative sessions or the attending senior officials, we obviously attach more importance to the relevant consultative exercises than before.

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

**DR KWOK KA-KI** (in Cantonese): *The Chief Secretary has not given me an answer. I was asking about the relationship between the executive authorities and the legislature. The 58 consultative sessions were mostly only shows .....*

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

**DR KWOK KA-KI** (in Cantonese): *..... that have nothing to do with the Legislative Council. Now, with less time spent consulting the Legislative Council, the communication between Members of the Legislative Council and senior officials has become even less .....*

**PRESIDENT** (in Cantonese): Dr KWOK Ka-ki, we are not in a debate now. Please repeat the part you think the Chief Secretary has not answered.

**DR KWOK KA-KI** (in Cantonese): *The Chief Secretary has not answered the part concerning whether the executive-legislative relationship will worsen, not improve.*

**PRESIDENT** (in Cantonese): The Chief Secretary has already answered it.

**MR LEE CHEUK-YAN** (in Cantonese): *I cannot understand why the Chief Secretary keeps emphasizing that this arrangement has merits. From the perspective of the Government, I can only see one merit: There used to be two occasions of debate in spring and autumn, or I should say two opportunities for community groups to voice their aspirations. Now, they have not the opportunity to do so in spring, and they can only do so in autumn. For the Government, this is the merit. Chief Secretary, is it the case that the Government simply does not want to allow the community, including Members of the Legislative Council, to have two occasions to express their views, and so it can do some senseless things? Prior to 1 July, the Government unveiled a so-called "report card" for no reason at all. The Government can do anything it likes, but our request for two opportunities to voice our aspirations is not acceded to.*

*May I ask the Chief Secretary to explain clearly what the greatest merit of reducing the number of consultative sessions to only one is? Does it mean that the Government can then act in a more repressive and dictatorial manner?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): This is certainly not the merit of a smaller time gap between the delivery of the two documents and joint consultations. As pointed out by me in the main reply, we will humbly listen to and duly consider the proposals and views received at any time and at any stage and will take them as reference for policy implementation. This remark applies particularly to Members of the Legislative Council because we attach great importance to the executive-legislative relationship. We will maintain continuous communication with Members through the year, rather than confining to only two separate occasions in spring and autumn.

Mr LEE should recall the banquet hosted by me last week for Members of the Labour Party, including you, and it is considered to be a sort of consultation, too. I have heard a lot of views put forward by Members of the Labour Party, and they will put forward their views when consultations are conducted on the Policy Address or the Budget.

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

**MR LEE CHEUK-YAN** (in Cantonese): *Why are we pinpointed for no reason at all? My supplementary question is about the aspirations of the community, not Members of the Legislative Council. The Chief Secretary has not answered my question: Will the community thus lose two opportunities to voice their aspirations?*

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

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, I have nothing to add.

**MR PAUL TSE** (in Cantonese): *Apparently, Members have to be more careful about having meals with government officials.*

*President, there is a popular saying among the Chinese people, and that is, "getting married for an expected child". Originally, getting married and having children are two separate stages, but sometimes people are compelled to go through them as one. Just now, the Chief Secretary might have let slip her opinion on "people being compelled to get married for an expected child". The reason cited by her just now was the change of government in the same year, but what was the real reason? Members should remember the many personal problems faced by the Chief Executive in the early period after he had taken office. The real reason was that the storm over the illegal structures had made it impossible for him to perform many tasks with peace of mind.*

*President, originally, the proven practice should be retained by all means, but reform is also important. Is this a case of the Government being compelled to get started as if it has to "get married for an expected child" and then package it with rhetoric, or it has really engaged in careful and serious consideration and come to the conclusion after examining the matter that consultations conducted in this manner are more effective and better? For a responsible, self-confident and committed government, the more frequent consultations the better.*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): I have already said that we will continue to consult various sectors on policy implementation, rather than confining to the Policy Address or the Budget. I must clarify here that I have explained the real reason behind the announcement of the next Policy Address in January as opposed to Mr TSE's speculation.

**DR KENNETH CHAN** (in Cantonese): *President, the Chief Secretary pointed out just now that there were certainly merits and demerits in conducting joint or separate public consultations. Can the Chief Secretary disclose the demerits to this Council?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): In fact, an in-depth study was conducted in the past on the timing of delivery of the Budget and the Policy Address. A so-called demerit was that, with a smaller time gap between the delivery of the two documents, Members might feel that they had nothing to discuss when the Council resumed in October. This was an opinion I heard at that time. In particular, the same phenomenon will occur during the first year of the new term of the Government. This is one of the demerits. The same problem will also occur towards the end of the term of the Government. In making considerations, we were aware that the relevant arrangement might bring some inconvenience, but all in all, we believed that there were more merits than demerits. Hence, we opted for this arrangement.

**MR PAUL TSE** (in Cantonese): *President, may I ask the Chief Secretary whether a proper review will be conducted during this term of the Government to assess the merits and demerits of the arrangement, or people should not expect any changes as this arrangement has already been adopted during this term?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): The fact that we have informed the President of the Legislative Council reflects that the Chief Executive has decided that this arrangement will continue to be adopted for the rest of this term of the Government.



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

### **Promotion of Rights and Well-being of Children**

4. **DR FERNANDO CHEUNG** (in Cantonese): *On 8 June 2007, this Council passed the following motion moved by me: "[t]hat this Council urges the Government to set up a Commission on Children to fulfil the obligations under the United Nations Convention on the Rights of the Child, safeguard the well-being of children, and ensure that children's perspectives are fully taken into account in the process of formulating government policies." However, the Government has not yet established a Commission on Children. In this connection, will the Government inform this Council:*

- (a) *of the reasons why the Government has not yet established a Commission on Children, and whether it has assessed the complementing policies, legislation and resources needed for the establishment of the Commission;*
- (b) *whether the Family Council and the Children's Rights Forum had taken measures in the past five years to promote the rights and well-being of children; if they had, of the details and the resources injected; if not, the reasons for that; of the respective measures taken by the two organizations to help children from groups with special needs (including poor families, single-parent families, families of new immigrants and ethnic minorities), children with disabilities, and children of different sexual orientations; whether the Government had introduced any special measures to improve the living environment of children from such groups with special needs (for example, according priority to these children's families in the allocation of public housing or provision of rent allowance); if it had, of the details; if not, the reasons for that; and*
- (c) *whether the Government currently has any measures to promote the rights and well-being of children as a whole; if it has, of a specific account of the objectives of the relevant measures, the effectiveness indicators, as well as the approach for evaluating the effectiveness of such measures; whether the Government has currently formulated a comprehensive child policy; if it has, of the details; if not, the*

*reasons for that; given that the Government has required, since 1 April this year, bureaux/departments to include the assessment of family implications in all policy submissions and Legislative Council briefs, how such an assessment can address the distinctive needs of children?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, the question raised by Member straddles across several policy areas. In consultation with the relevant Policy Bureaux, I hereby respond to Member's question on behalf of the Administration.

In the first place, the Administration considers that family is an important unit in society. We believe that children are best protected and nurtured within a loving family. Therefore, our policy is to preserve and strengthen cohesion within the family, use a family-based approach to provide the necessary care for children, and provide services to families in need. In accordance with the aforementioned policy objective, the Administration is all along committed to formulating policies which are conducive to the growth and development of children.

My response to the various parts of the Member's question is as follows:

- (a) Matters concerning the well-being of children involve different policy areas. The relevant Policy Bureaux will undoubtedly handle matters under their respective purviews, such as formulating specific legislation for protecting the rights of children, and earmarking resources for implementing various policies. In case there are matters which involve a number of policy areas, Policy Bureaux will co-ordinate among themselves. We will also suitably co-ordinate and support through mechanisms such as the Policy Committee.

In the process of making decisions in relation to children, the relevant Policy Bureaux will take the "best interests of the child" as an essential and major factor of consideration. The implementation of various legislation and policies is also monitored by the Legislative Council, The Ombudsman, the media and the community at large.

As regards the collection of opinions when formulating policies relating to children, it is the current practice for Policy Bureaux to seek views from the relevant advisory bodies.

Furthermore, since its establishment in 2007, the Family Council has been striving to advocate the importance of family concept, and promote the use of family core values as the driving force for enhancing social harmony. Since 1 April this year, Policy Bureaux are required to include family perspectives when formulating policies for different age and gender sectors (including children). They are required to use the three sets of family core values (that is, "love and care", "respect and responsibilities" and "communication and harmony") as identified by the Family Council, as well as the impact on family's structure and functions as the basis for assessing the effect of their policies on families. They are also required to consider consulting the Family Council on policies which will affect the family. We believe that such an arrangement will enable Policy Bureaux to formulate policies which could better suit the family-related needs of women, children, youths and elderly.

As regards the Children's Rights Forum established in 2005, it is a step further for providing a platform for non-government organizations, children and the Government to exchange views on children affairs.

To sum up, we consider that the current arrangement in handling children affairs is functioning well. It helps to provide us with flexibility in addressing the concern of various sectors on children matters, and is in line with our policy objective of strengthening the role of family. The Administration therefore is of the view that there is no imminent need to establish a Commission on Children.

(b) and (c)

As stated in the preamble and part (a) of my reply, the Administration's work in handling matters relating to children's well-being is not confined to those undertaken by the Family Council or the Children's Rights Forum only. It is implemented through various Policy Bureaux under an integrated approach.

Considering the work of the Family Council, in the past five years, it has spent about \$76 million on promoting family core values, conducting research, family education and supportive work. This includes the launching of the two-year "Pilot Scheme on Family Mediation Service" in May 2012, which provides sponsorship to interested organizations to provide family mediation services to families with economic difficulties, with a view to assisting them in resolving family disputes and alleviating the negative impact on family members (especially children) arising from litigation. The Family Council has also discussed items such as the comprehensive child development service, and the support for families with new arrivals from the Mainland.

Since its establishment, the Children's Rights Forum has discussed over 25 items. They include topics of close relevance to children, such as the legislation for implementing the "Joint Parental Responsibility Model". The Forum also encourages the participation of people coming from different sectors who are interested in children affairs, and welcomes suggestions on discussion items.

We have also been implementing programmes such as the Children's Rights Education Funding Scheme and school outreach activities to promote children's rights. In 2013-2014, we have allocated around \$2.15 million for the relevant programmes, which represents an increase of around 57% as compared with the original estimate of last year. The relevant programmes are implemented by the Children's Rights Unit of the Constitutional and Mainland Affairs Bureau.

Apart from those programmes as discussed by the Family Council or the Children's Rights Forum, relevant Policy Bureaux have also been implementing extensive measures to enhance children's rights and well-being. Some examples are as follows:

In terms of financial support, the Comprehensive Social Security Assistance (CSSA) Scheme provides financial assistance, including rent allowance, to families in need. Single parents and family

carers are provided with higher standard rates and additional supplement under CSSA.

In terms of housing, the Social Welfare Department (SWD) will recommend families and individuals who are in need to the Housing Authority (HA) for its consideration of granting them fast-track access to public rental housing (PRH). For divorced couples living in PRH units, the party which is granted custody of any children can continue to live in the public housing unit. If a disabled member of a family is certified to have special allocation need(s), the HA will endeavour to make corresponding allocation arrangements so far as resources permit. "Barrier-free" units will be offered to them as far as possible.

In terms of education, our student financial assistance policy ensures that no student will be denied access to education due to lack of economic means.

In terms of social welfare, the SWD provides services to all citizens in need, including single-parent families and families with special needs. It also provides diversified and flexible child care services, fee waivers or subsidies.

To address the needs of new-arrival children, the Education Bureau arranges for direct admission for those between six and 15, and provides information on study paths for those who are aged 15 or above. The Home Affairs Department (HAD) also implements a series of programmes to assist new arrivals from the Mainland to integrate into the society.

Regarding ethnic minorities, the HAD has established support services centres to assist their integration with society since 2009. The Education Bureau also endeavours to assist non-Chinese speaking students to adapt to the local education system and learn Chinese. Measures include providing after-school extended Chinese learning for non-Chinese speaking students, and so on.

To meet the needs of disabled children, the Administration provides early intervention services to disabled children or children at risk of

becoming disabled below the age of six, to enhance their physical and psychological development and build up their social ability.

To ensure that children with different sexual orientation will not be discriminated, guidelines have been formulated by the Education Bureau to request textbook publishers not to include discriminative contents in their publications. The Education Bureau will also remind schools of the need to avoid all kinds of discrimination when formulating their school-based policies and procedures. Topics on sexual orientation and the prevention of discrimination on the basis of sexual orientation are included in the curriculums of secondary and primary schools.

In future, the Administration will continue to promote children's rights and well-being, for example:

- (i) In terms of education, the Education Bureau will continue to provide children with comprehensive school curriculum and other learning experience.
- (ii) In terms of social welfare services, the SWD will continue to deliver comprehensive family and children welfare services under the direction of "child-centred, family-focused and community-based".
- (iii) In terms of medical and healthcare, the Administration will develop the Centre of Excellence in Paediatrics to provide services for children with complex, serious and rare diseases.

**DR FERNANDO CHEUNG** (in Cantonese): *President, the Government mentioned love and care and that it would take the best interests of the child into account when considering the relevant policies, but one fourth of the children in Hong Kong are living in poverty. For so many years, we have passed relevant motions but the Government remains unwilling to set up a mechanism specifically charged with protecting the rights of the child.*

*In the main reply, the Secretary mentioned that disabled children below six need early intervention services. But at present such services require a waiting*

*time of two years. Some organizations have pointed out that 80% of the children are already five years old when they receive these services for the "golden age" and these services will not be provided when the children reach six years of age. Most children are unable to receive the services during their "golden age", that is, when they are below six years of age .....*

**PRESIDENT** (in Cantonese): Dr CHEUNG, please raise your supplementary question.

**DR FERNANDO CHEUNG** (in Cantonese): *My supplementary question is, about this service or policy, is it delivered with consideration of the best interests of the child? What mechanism do you have to ensure that services provided to children are in their best interest?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, the placing of the best interests of the child as an important consideration can be seen in all our policy areas. Dr Fernando CHEUNG made special mention of early intervention services. Actually, I would think that Dr CHEUNG knows more clearly than I do that this kind of services is very important to the development of disabled children or children who may develop disabilities. Therefore, the SWD will increase pre-primary rehabilitation places and provide intervention and training services for children with special needs.

With respect to the question of whether this kind of services can meet the demand, I think Dr CHEUNG has expressed his views on that all along. I am not in charge of the policies in this area, but I have listened to views expressed and I am sure the Administration will continue to listen to views from Dr CHEUNG and see how we can provide more suitable services to children with special needs. We will listen to Members' views humbly and in the light of the actual situation.

**DR FERNANDO CHEUNG** (in Cantonese): *President, I do not mind to have Secretary CHEUNG or other people to answer this question. But I was asking the Secretary how it can be ensured that policy considerations by the Government*

*will be made in the best interests of the child. Now the waiting list for this kind of services is growing longer and longer .....*

**PRESIDENT** (in Cantonese): Dr CHEUNG, please let the Secretary give his reply.

**DR FERNANDO CHEUNG** (in Cantonese): ..... *and the situation is getting worse. Does the Bureau have any mechanism in place to safeguard their best interests?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I think there are two different considerations in this question. First, if it is just a matter of the difference between service needs and provision of resources, this can of course be dealt with under our mechanism for resource allocation. In another oral question raised before this, the Financial Secretary mentioned how the Budget could dovetail with the Policy Address. Secretary CHEUNG was in attendance at that time and I think a response will be made in the overall resource allocation of the Government. When I gave a reply earlier, I said that we would listen humbly to views expressed. As to what the best interests of the child are, my understanding is that any policy we introduce would involve citizens of different age groups or backgrounds and our policy consideration is that if the policy concerned would have any effect on the children, then the policy should be based on the children and their best interests should be made a concern. When a policy straddles different policy areas or involves consideration for different principles, we will consider what is in the best interests of the child.

I have also said in the main reply that the so-called family implications will include children as a group. Starting from 1 April this year, an assessment in this respect should be made in the policy papers. If a policy will have an impact on the child, we must consider the principle of what measures can take into account the best interests of the child as we formulate the policy. We hope that this new arrangement can meet the requirements in this regard.



**MR CHEUNG KWOK-CHE** (in Cantonese): *President, the response from the Government which is two to three pages long is basically a recount of the work presently done by it. I think such a response is only a patchwork approach to the problem and will not solve it. On the other hand, the authorities think that the work of the Family Council covers children, but I do not see much work done by the Family Council to further the well-being of children. In such circumstances, there is no bureau/department which takes any special consideration of the children, cares for their development and co-ordinates relevant services. In addition, there is no policy with foresight planned or formulated to cope with the difficulties faced by them, this is in our opinion a problem .....*

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

**MR CHEUNG KWOK-CHE** (in Cantonese): *May I ask the Government whether it will consider setting up a Commission on Children?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I mentioned in the main reply that children have all sorts of needs during their development, including those in education, welfare, healthcare, leisure and cultural activities, as well as needs in other aspects. The government framework coping with and addressing these needs is called a matrix, that is, we have specific Policy Bureaux which devise policies and allocate resources to meet specific needs. At the same time, we have both inside and outside the Government some horizontal mechanisms and those which straddle different bureaux and policies. These can result in some matching co-ordination or adjustments. For example, as I have said in the main reply, there are three occasions on which co-ordination can be made. First, it is in the Policy Committees in the Government. Any policy paper must undergo co-ordination by the relevant Policy Committee and different Policy Bureaux. At this level an overview will be made. The second is the Family Council I have just mentioned. Previously, the Family Council has discussed policy matters concerning children. The third is the Children's Rights Forum established in 2005. As mentioned in the main reply, we have taken on board views from the Forum in some 20 policies. I am sure this matrix can meet the needs of child

care as well as nurturing children in families. We consider that the existing arrangements can meet these needs.

With respect to the Forum, we have taken on board the views expressed by those who have attended its meetings. The Forum now holds more meetings and since last year, it holds a meeting every quarter. In terms of setting the agenda, we hope to include issues of concern expressed by child representatives and institutional representatives. This applies especially to certain issues straddle various policies. We all hope that these can be included in the agenda. It is hoped that through this Forum, the relevant Policy Bureaux and stakeholders can engage in regular exchanges and the agendas can be well-structured and better meet the needs of children.

**MR STEVEN HO** (in Cantonese): *President, the Law Reform Commission published a report on Child Custody and Access in 2005 and the contents are about recommendations on child custody and access rights. The focus is to introduce the joint parental responsibility model into family law to replace the child custody arrangement for parents after divorce under the existing law. My supplementary question is: Will the authorities enact legislation to implement this joint parental responsibility model and will Hong Kong fail to implement the relevant United Nations Convention for not implementing the joint parental responsibility model in a timely manner?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Thanks to Mr HO for his supplementary question. According to the information I have on hand, the Labour and Welfare Bureau launched a public consultation exercise in end December 2011 on the question of whether Hong Kong should enact legislation to implement the joint parental responsibility model. The consultation exercise completed in end April last year. We have received more than 230 submissions. There are views that Hong Kong should enact legislation to implement the joint parental responsibility model. But there are also stakeholders who are worried about the recommendation made by the Law Reform Commission. The relevant Policy Bureau will brief the Legislative Council on the way forward. However, I wish to stress that the resources we have injected into the relevant welfare services have been increasing in recent years. Irrespective of whether the public is inclined towards enacting legislation to implement the joint parental responsibility model, we will in the light of the

latest situation in society consider the services required and enhance our family support measures.

Mr HO has just mentioned Article 18 of the United Nations Convention. I wish to point out that Article 18 of the Convention mainly provides for States Parties to try their best to ensure that parents recognize their responsibility for the growth and development of their children. The States Parties should also help parents in need fulfil the above responsibility by the provision of various kinds of support services. However, the Convention does not require States Parties to introduce the joint parental responsibility model into law. This is the information I wish to provide. As for the way forward, as I have said, the relevant Policy Bureau will come to the Legislative Council to give an account of the views collected in the consultation exercise as well as complementary work to be undertaken.

**MR IP KIN-YUEN** (in Cantonese): *President, Article 28 of the Convention provides that States Parties shall make higher education accessible to all on the basis of capacity by every appropriate means. The focus is on capacity instead of wealth. But surveys found that currently the poor children in Hong Kong have a much lower chance of admission into a university than wealthier children. I believe this is because of the many problems we have in our system, including the fact that we do not have 15 years of compulsory education but instead we have Direct Subsidy Scheme schools which are exclusive to the wealthy as well as an ever-growing market of self-financing associate degree programmes. The result is that children from poor families do not have a fair chance of competition. My supplementary question is: Now that the Government refuses to establish a Commission on Children or it is delaying its establishment, if the Secretary or the Government agrees that the present state of affairs is a deviation or a contravention of the requirements of the Convention, what methods are there to protect this right of the children so that they can be given a fair opportunity to receive higher education according to their capacity?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, according to the information I have on hand, the Government has all along been providing assistance to children from less well-off families through various schemes so that they can have a fair opportunity to receive education. This is because, after all, education is a very important factor

in helping people break away from poverty. I think Mr IP also knows very clearly that we have many financial assistance schemes such as the School Textbook Assistance Scheme, the Student Travel Subsidy Scheme, the Subsidy Scheme for Internet Access Charges and the Examination Fee Remission Scheme.

Mr IP has just mentioned 15-year compulsory education. With respect to pre-primary education, during the past few years, we have had the Pre-Primary Education Voucher Scheme. The present-term Chief Executive has also put forward some of his ideas about pre-primary education. Mr IP has also mentioned university admission. I think these are good topics and we can make use of the Children's Rights Forum to enable colleagues from the relevant Policy Bureaux and stakeholders to exchange their views on topics of their concern to see how government policies and measures can better cope with the problem of children from less well-off families in pre-primary education and enrolling in primary and secondary schools as well as universities which is a subject of concern for Mr IP. I will see after the meeting whether the Children's Rights Forum can make any arrangements so that the Policy Bureaux and stakeholders can have a chance to exchange their views.

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

**MR IP KIN-YUEN** (in Cantonese): *President, the Secretary has just .....*

**PRESIDENT** (in Cantonese): Mr IP, the Secretary has given his reply. If you think that the existing government policies are inadequate, please follow up in the relevant panel. Fifth question.

### **Services Provided for Elderly Suffering from Dementia**

5. **MR CHEUNG KWOK-CHE** (in Cantonese): *President, some social workers working in integrated community centres for mental wellness (ICCMWs) have relayed to me that a growing number of elderly persons suffering from dementia have been referred by elderly services units to their centres for*

*counselling and welfare services. These social workers have indicated that as the manpower of social workers and ancillary facilities for such centres are now inadequate, they have found it increasingly difficult to cope with such work. In this connection, will the Government inform this Council:*

- (a) whether the elderly services units or those providing rehabilitation services for people recovering from mental illness (rehabilitation service providers) are entrusted by the Social Welfare Department (SWD) to be the main provider of services for the elderly suffering from dementia, and the reasons for such an arrangement; if such services should mainly be provided by ICCMWs, whether the Government will allocate additional resources to these centres for employing more social workers to cope with the service demand; if the services should be provided both by elderly services units and rehabilitation service providers, how the SWD co-ordinates the allocation of resources and division of work between them;*
- (b) whether the SWD has issued any guidelines to District Elderly Community Centres (DECCs) and Neighbourhood Elderly Centres (NECs) regarding the provision of services for the elderly suffering from dementia; if it has, of the details; whether it has provided additional subsidies to such centres for employing additional manpower and meeting other relevant expenses; if it has, of the details; if not, the reasons for that; and*
- (c) as the number of elderly persons suffering from dementia will increase with the ageing population and consequently their demand for services will be growing, of the corresponding policies and measures of the Government to enhance and improve the relevant services?*

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

- (a) and (b)

The SWD has all along been committed to providing appropriate services for the needy, including elderly persons suffering from

dementia. Through various service units, including the rehabilitation service units and elderly service units, the SWD provides effective support for the elderly with different needs.

At present, there are ICCMWs in all the 18 districts, providing one-stop mental health community support and social rehabilitation services ranging from early prevention to risk management for discharged mental patients, persons with mental health problems, their families, carers and residents living in the serving district. The elderly centres in various districts, on the other hand, aim to provide community support services for elderly persons and their carers at the neighbourhood level, so that the elderly can receive multifarious services at the centres in the vicinity of their homes.

The Administration has been providing additional resources to strengthen the manpower of service units, enhance the services and relieve the pressure of their staff. For the three years since 2011-2012, the SWD has allocated additional recurrent provision of \$60.5 million in total to enhance the manpower of the ICCMWs, including social workers, to cope with the service demand. As for community support services for the elderly, we have allocated additional annual recurrent provision of \$60 million since 2008 to all DECCs and NECs across the territory to create a total of 200 social worker posts to strengthen the outreaching services of these centres and enhance counselling and referral services for the elderly. The SWD does not keep itemized breakdown on the resources specifically used for the support for elderly with dementia. Furthermore, the SWD has provided training on the skills of caring for elderly with dementia for social workers at elderly service units (including DECCs and NECs) so as to enhance the capabilities of these units in supporting such elderly persons and their family members.

For the elderly with long-term care needs (including those suffering from dementia), the SWD provides a range of care services, including residential care services, day care services and home-based services. All these services cover cognitive training, memory training, reality orientation, reminiscence therapy, and so on, which help strengthen the support for demented elderly. As regards the

provision of resources, the Administration will provide a recurrent allocation of \$216.9 million in 2013-2014 for Dementia Supplement. The SWD will also assist the service units in improving the facilities of residential care homes for the elderly and day care centres, purchasing bed monitoring systems, anti-wandering systems, facilities for multisensory therapy, and so on, and providing regular training for staff and support for carers.

- (c) The Food and Health Bureau has set up the Review Committee on Mental Health (Review Committee). It is tasked to review the existing mental health policy with a view to mapping out the future direction for the development of mental health services in Hong Kong, including support for persons suffering from dementia. The Review Committee is chaired by the Secretary for Food and Health. Its members include representatives from the healthcare and social welfare sectors, Legislative Council Members, academics and patients' families, as well as representatives of the Labour and Welfare Bureau and the SWD. The Review Committee aims to conclude the review in about one year. The Elderly Commission is also concerned about the dementia issue and will actively follow up the work of, and collaborate with, the Review Committee.

**MR CHEUNG KWOK-CHE** (in Cantonese): *President, the Secretary's main reply has clearly told us that the Government actually hopes that there can be division of work in that the elderly centres are responsible for providing services to elderly suffering from dementia while the ICCMWs are responsible for providing services relating to mental health. I think the reason why there is still such confusion is obviously that clarity is lacking in the Government's guidelines, or the Government basically has no guidelines at all. May I ask the Secretary whether the Government will draw up clear guidelines or enhance the existing guidelines?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): *President, as I explained clearly in the main reply earlier on, they are indeed performing their respective roles now. But I must explain the actual situation here. It is true that when some staff of the DECCs came across elderly persons with dementia and emotional problems, especially when the elders show emotional conditions, they may refer such elderly to the ICCMWs. It is true that there are these cases*

but they are not large in number. We have looked up the records but we cannot ascertain the exact number of these referrals. However, it is true that some of these cases involving elderly persons have been referred to these centres.

We found that in the past year, there were only six or seven such cases on average each month, which is not a large number. Most of these cases have been dealt with by the relevant service units and, as I said earlier on, we are very much concerned about the overall services provided for the demented elderly and we hope that one-stop integrated services can be provided. As I clearly explained in the main reply, we have continuously injected resources for training in the elderly centres and we are also channelling resources to the ICCMWs. We hope to ensure that pertinent services are provided through a complementary, two-pronged approach.

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

**MR CHEUNG KWOK-CHE** (in Cantonese): *Simply put, the Secretary has remained reluctant to tell us whether the guidelines will be enhanced. He did put it very clear, but is he going to do it?*

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

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, as I have said clearly, their roles are clearly defined but they are also complementary at the same time, and they share the same objective of helping the elderly in need.

**MR TANG KA-PIU** (in Cantonese): *President, the number of people suffering from dementia and the service demand are indeed worrying to us. But what worries us most is that the Government has no specific policy or strategy to cope with this trend accordingly because many organizations have estimated that the number of these patients will exceed 200 000 two decades later. My supplementary question is this: The Secretary said in the main reply that the elderly will be provided with multifarious services, which sounds pretty good, but*



*the fact is that, as reflected by many family members of these patients and professional bodies, the services currently provided at day care centres precisely have the problem of being too integrated. As a result, these services cannot appropriately meet the needs of people suffering from dementia while statistics show that 30% to 40% of the elderly in these day care centres are demented. In this connection, may I ask the Secretary whether he will draw up a strategy specifically for providing services to elderly suffering from dementia, in order to meet their needs?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, thanks to Mr TANG's supplementary question. Indeed, we have explored this issue before, and a pilot scheme was implemented in the three years from 1999 to 2002. In those three years, residential care homes for the elderly (RCHEs) or day care centres were set up to take care of the demented elders exclusively. However, the consultancy report submitted after the conclusion of the pilot scheme pointed out that an integrated mode rather than a separate mode should be adopted in providing services for the demented elders. It also advised against the approach of assigning a group of people to provide services specifically for the demented elderly and considered that integrated services should be provided, rather than separating the demented elders from the others, in order for a continuum of continuous services to be utilized effectively. Moreover, as these elderly grow older, they may develop different health conditions at different stages, and the severity of their disease may also increase.

In view of this, our current approach is to provide a range of comprehensive and integrated support in response to the results of the pilot scheme implemented between 1999 and 2002. We did try to provide services to them exclusively, but it was found that this is not the most desirable approach. This is why we have switched to an integrated mode and we are working in this direction.

Having said that, I wish to add that we have a policy on the day care centres which represents one step taken forward. As Members may know, this year, we have provided day care centres with a supplement as mentioned earlier, so that apart from the RCHEs, day care centres are also provided with subsidies. There is now a large number of beneficiaries as a few thousand elderly persons have been benefited. We also provide an annual grant of \$25,000 to each of

these elderly care centres, including day care centres, for them to hire additional manpower, acquire services or other facilities, and so on, in the hope that assistance can be provided to more elders.

**MR TANG KA-PIU** (in Cantonese): *President, I only wish the Secretary to clarify one point: Does he mean that he will not further consider drawing up a strategy and providing services specifically for the demented elders?*

**PRESIDENT** (in Cantonese): The Secretary has already given a reply clearly.

**MR POON SIU-PING** (in Cantonese): *President, may I ask the Secretary whether the Government has collected statistics on the percentage of demented elders among elderly persons currently receiving elderly care services provided by the SWD, including elderly persons living in RCHEs and receiving community care services, and whether the Government has assessed the needs of these elders for additional services, say, in terms of training and the provision of carers?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, we do not have these figures with us now, but according to a survey conducted jointly by the Department of Health and The Chinese University of Hong Kong in 2006, among elderly persons aged over 70 who live in their homes or the non-institutionalized elderly, about 9.3% may belong to this type of elderly. So, the number is quite high. The psychiatry departments under the Hospital Authority are following up 11 000 cases. The Census and Statistics Department also conducted a topical study in 2009 and their findings are also worthy reference for us. The findings of this study pointed out that among elderly persons aged over 60 living in RCHEs, as many as 31% were suffering from dementia. So, the problem is indeed serious.

In this connection, Members can see that we have continuously injected resources for this purpose over the past few years and this year, more resources will be provided, so that apart from the ICCMWs, day care centres and private RCHEs from which the Government has bought places can also be provided with resources. Insofar as private RCHEs are concerned, each inmate suffering from

dementia can be provided with an extra allowance of \$40,000 annually for the RCHE concerned to increase the provision of manpower and facilities and hence provide better services.

**DR FERNANDO CHEUNG** (in Cantonese): *President, disregarding whether dementia is rendered as "癡呆症", "認知障礙症" or "腦退化症" in Chinese, it actually refers to a disease characterized by cognitive impairment. It happens not only to the elderly, nor is it purely confined to people aged over 60, for young people will suffer from it, too.*

*The treatment of this disease is currently moving in the direction of specialization but the Secretary has said time and again that an integrated approach should be adopted and lumped together everything. But there are actually about eight self-financed day care centres which specially provide services for patients suffering from this disease .....*

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

**DR FERNANDO CHEUNG** (in Cantonese): *My supplementary question is: While the Secretary is aware that the demand is very keen and even the NGOs are trying to meet the needs by operating centres on a self-financing basis, the Government is still reluctant to admit the need to provide specialized services for these elders. May I ask the Government when it will be willing to allocate funding for providing specialized day care, home care or residential care services specifically for patients suffering from dementia?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, as I already explained clearly in the main reply, in the current financial year alone, the supplement granted for caring elderly with dementia, including the subsidies provided to RCHEs, private RCHEs from which the Government has bought places and day care centres not funded by the Government before, already involved additional resources amounting to \$216.9 million and this is a recurrent allocation. This can best prove that we are concerned about this issue and we have injected resources for special care of these elders.

Besides, in respect of training, we also have a comprehensive plan to train professionals or healthcare workers, with the objective of training 300 front-line workers and 130 professionals. Although we do not have centres, care homes or other institutions where these services are provided specially for such elderly, we have provided target-specific resources, manpower and material support to help these elders under an integrated approach.

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

**DR FERNANDO CHEUNG** (in Cantonese): *My question was about specialized services. When will the Secretary provide specialized services for these elders? Because whether in terms of facilities, the environment or methods of treatment, special arrangements will have to be made in order to provide these services.*

**PRESIDENT** (in Cantonese): Secretary, will specialized services be provided?

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, we do not have RCHEs or care centres which specifically provide services for elderly with dementia now, but our approach is to tailor-make a care plan for each elder according to his or her personal needs, with the objective of providing focused assistance. This is what we have been doing in terms of manpower, services or resources.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, the Secretary has kept on saying that more resources have already been allocated for RCHEs to provide services to help elderly persons with dementia. I think this is something the Government must do because given the ageing of the population, the demand will definitely increase and so, it is indeed incumbent on the Government to do this. But the Government has failed to address a problem also mentioned by Dr Fernando CHEUNG just now and that is, the problem that the age of people suffering from dementia is getting younger and in particular, the number of people with dementia who are persons with intellectual disabilities or young of*

*age is increasing. As they have not yet reached the age of 60, they are not provided with day care or long-term residential care services.*

*I wish to ask the Secretary this: What services will be provided to non-elderly people who suffer from dementia? Will the Government establish an independent body to provide these services, just as some colleagues suggested earlier, to enable non-elderly people with dementia to access day care and even residential services?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, thanks to Mr LEUNG for his supplementary question. While it is true that dementia is not confined to people of a certain age, we have conducted a study and found that people over 60 are more prone to this disease whereas people under 60 stand a lower chance of contracting it. That said, I fully agree that it does not mean that this will never happen. However, our focus is to first deal with the demand of the elderly before we gradually take steps to meet the needs of other people. Where resources permit, we absolutely will not rule out the possibility of looking into ways to help patients under 60.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, the Secretary has not answered my question. Although he said that studies would be conducted on the provision of resources for them but nothing has been put into practice yet and he only said that the needs of the elderly will be first taken care of .....*

**PRESIDENT** (in Cantonese): Please repeat your follow-up question.

**MR LEUNG YIU-CHUNG** (in Cantonese): *..... My question is: With regard to that very clear mode of service that I have just mentioned, will the Government establish an independent body to provide day care and long-term residential services for non-elderly people with dementia?*

**PRESIDENT** (in Cantonese): The Secretary has already given a reply on the existing policy. If Members are still unsatisfied, please follow up the matter in the panel.

**MR LEE CHEUK-YAN** (in Cantonese): *President, from the Secretary's reply earlier on, it seems that services are only provided to people over 60, such as the Secretary himself, the Chief Executive, and so on, whereas people under 60 are all neglected. I particularly think that the supplementary question raised by Mr LEUNG Yiu-chung just now is very important because it involves persons with intellectual disabilities. If a person who is mentally handicapped suffers from dementia, that would be most miserable, and they would have a greater need for care services.*

*In this connection, I do not intend to argue with the Secretary over the provision of specialized services for people with dementia, as mentioned by many Members earlier .....*

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

**MR LEE CHEUK-YAN** (in Cantonese): *..... I am not going to argue over the question of specialized services. I only focus on the part relating to the persons with intellectual disabilities. Will the Government provide additional resources for organizations which are currently providing services to mentally handicapped people who are found to have dementia, just as what it has been doing for the elderly?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, thanks to Mr LEE for the supplementary question. I wish to clarify once again that on the question of whether the day care centres for the elderly should also be open to people under 60, we do not have this plan now and I have also explained the reason. However, for people of any age below 60, if they encounter difficulties or show signs of dementia at the early stage as we have just talked about, the ICCMWs actually do not have an age limit for their services and so, the ICCMWs can provide services to these people.

Moreover, as I pointed out in the main reply, we have considerably increased the annual provision of resources by allocating recurrent provision over the past three years. As of this year, funding totalling \$60.5 million has already been provided to ICCMWs for purposes of carrying out more work, thereby

providing more support to the locals, including people mentioned by Members earlier on.

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

**MR LEE CHEUK-YAN** (in Cantonese): *The Secretary was talking about mental health but I am talking about persons with disabilities. What they face now is not a mental health problem. So, when I am talking about persons with intellectual disabilities but the Secretary has, for no reason at all, linked this with the question of mental health, I really do not know if it is me or him who is mentally handicapped.*

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

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, as I pointed out very clearly earlier, the ICCMWs provide multifarious services and support for the locals. If the locals encounter difficulties, they can seek assistance from the ICCMW concerned and the staff at the centre will provide assistance or make referrals for them accordingly.

**IR DR LO WAI-KWOK** (in Cantonese): *President, when it comes to taking care of elderly suffering from dementia, I must say that my family has deep feelings about it. If we wish to choose a RCHE of a better quality, the cost is very expensive even for those non-profit-making ones. A more realistic problem is that for families which choose to take care of the demented elderly at home, sometimes it does not just involve the question of financial capability because even if a family can afford the costs financially, it often does not have the knowledge and support for taking care of these elders. For example, the domestic helper may be a Filipino or an Indonesian who basically does not know how to take care of these elders. In this connection, what support is provided by the Government? Can training be provided to non-English speaking domestic helpers to teach them how they should take care of elderly with dementia?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): The problem raised by Ir Dr LO is very realistic and correct. We have in place a training scheme for care of the elderly. Our objective is to make injections into a seed fund for all DECCs and NECs in the territory, in order to provide assistance to the carers mentioned by the Honourable Member just now. It is because many domestic helpers or carers do not know what exactly to do. Great care must be exercised in moving the elders or else the carers may easily hurt themselves, not to mention taking care of the demented elderly. Therefore, we are making an effort to impart such knowledge to the carers by the provision of training through the DECCs. Any person who has needs can call the hotline of the SWD or browse its website, in order to find out at which DECCs such very useful and pertinent training is provided.

**MR NG LEUNG-SING** (in Cantonese): *President, it is learnt that there is a problem in the arrangement for public rental housing (PRH) because people with health problems may need to hire foreign domestic helpers who will live in their PRH units to take care of them. May I ask whether it is also necessary to include the relevant government personnel responsible for the public housing policy in the composition of the new Review Committee?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thanks to Mr NG for his supplementary question. The Review Committee will definitely consider this issue on all fronts and study the way forward. The Review Committee is comprised of professionals, social workers, academics, and so on, but it may not include representatives engaged in housing matters. However, this does not mean that the Review Committee cannot incorporate views on this front. We will certainly convey this view from the Member to Dr KO, Chairman of the Review Committee, for him to proactively take measures or study ways to include this view in the Review Committee, so that the Review Committee can make reference to this view in drawing up proposals in future and consider how this problem should actually be addressed.

**PRESIDENT** (in Cantonese): We have spent 23 minutes on this question. Last oral question.



**Ancillary Facilities for Kai Tak Cruise Terminal**

6. **MR PAUL TSE** (in Cantonese): *President, the first berth of the Cruise Terminal at Kai Tak Development Area (the Terminal) was commissioned on the 12th of this month. According to media reports, the ancillary transport facilities of the Terminal were inadequate, causing much inconvenience to cruise visitors when they went sightseeing and shopping. For instance, the waiting time of visitors for taxis was too long. Also, vehicles travelling from the Terminal to the Kwun Tong District, and to Hong Kong Island East via the Eastern Harbour Crossing have to route through the traffic bottlenecks in areas from Kowloon Bay to Kowloon City. In this connection, will the Government inform this Council:*

- (a) *of the progress of the relevant study on the plan to construct an Environmentally Friendly Linkage System (EFLS) for Kowloon East connecting the Kai Tak Development Area and the Kwun Tong District; whether the authorities will, in view of the traffic problems which surfaced on the commissioning day of the Terminal, expeditiously implement the construction of EFLS; if they will, of the anticipated implementation time; if not, the reasons for that;*
- (b) *whether the authorities will consider afresh providing water taxi or minor ferry services in the vicinity of the Terminal before the commissioning of the aforesaid EFLS, to facilitate cruise visitors to travel directly between the Terminal and various shopping centres and tourist spots in Kwun Tong District, Lei Yue Mun and on the Hong Kong Island; and*
- (c) *whether it had measured the air quality in the vicinity of the Terminal when for the first time a cruise vessel was berthing there, which may serve as justifications for expediting the installation of onshore power supply facilities at the Terminal, as well as for enacting legislation to require cruise vessels at berth to switch to low-sulphur diesel, so as to ensure the air quality in Kowloon East (in particular the Kwun Tong District) will not deteriorate as a result of the berthing of cruise vessels; if it had measured, of the outcome; if not, the reasons for that?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, the inaugural berthing of "Mariner of the Seas" at the Kai Tak Cruise Terminal (the Terminal) took place on 12 June 2013. The arrangements during this ship call were generally smooth. Both the facilities and the exterior design of the Terminal won high acclaim from the cruise company and passengers. As the Terminal comes into operation, it will greatly enhance our capacity in receiving cruise liners and reinforce our position as one of the cruise hubs in Asia. The terminal operator and the relevant parties will draw on their experience with the berthing of "Mariner of the Seas" to make improvements and provide better service in future.

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

- (a) To facilitate the transformation of Kowloon East into an attractive and alternative Central Business District (CBD2), the Civil Engineering and Development Department has engaged a consultant to conduct a preliminary feasibility study on an EFLS for Kowloon East. A two-stage public consultation on the proposed EFLS conducted by the Development Bureau is underway.

Stage 1 public consultation was held by the Development Bureau between February and October 2012 to share the findings of the preliminary feasibility study on the EFLS with the public and listen to their views. While there was a general public consensus that enhanced inter-district and intra-district connectivity of Kowloon East was the key to the success of transforming Kowloon East into a CBD2, the public and stakeholders raised concerns on the financial efficacy and proposed alignment of the EFLS.

Having studied and reviewed the major comments and suggestions collected during Stage 1 public consultation, the Development Bureau is prepared to commence Stage 2 public consultation in respect of the amended proposal in the latter half of 2013.

While a decision to take forward the EFLS is to be made, its implementation is largely dependent on the development pace of the major infrastructure/developments in the Kai Tak Development

Area, for example, the Shatin-to-Central Link and the landscaped deck on top of the access road running along the centerline of the former runway. Construction of the EFLS could only commence after major infrastructure projects along the route of the EFLS are completed between 2018 and 2021 and handover of the land for the EFLS. We estimate that the tentative commissioning date of the EFLS would not be earlier than 2023 and there is little possibility to advance the commissioning date of the EFLS.

- (b) We attach great importance to the transport arrangements for the Terminal. Prior to the inaugural berthing of "Mariner of the Seas", the terminal operator has engaged the cruise company and local shore excursion operator in discussion about the transport arrangements for the cruise passengers. The local shore excursion operator arranged excursion programmes and shuttle buses operating between the Terminal and Tsim Sha Tsui East; while the terminal operator organized shuttle bus services running between the Terminal and nearby shopping malls, and liaised with the taxi trade to arrange for taxis to pick up cruise passengers at the Terminal. On the night of 12 June, there were some hiccups in communication about taxis entering the Terminal initially, but they were quickly resolved.

Regarding the suggestion of introducing water taxi services, the Government notes that the nature, operational mode, berthing facilities and regulatory framework of the existing water taxi services around the world are all different. The Government needs to consider a variety of issues including technology, operation, cost-effectiveness, safety and legislation, and so on, to assess whether water taxis are suitable to be introduced in Hong Kong for the purpose of linking the Terminal with other districts. We also need to examine the complicated issues in the light of the actual needs and unique environment of Hong Kong.

As for the provision of additional ferry services, we will closely monitor the inclinations of the ferry trade. We will consider the

feasibility of the proposal upon receipt of the same from ferry operators.

- (c) The Environmental Protection Department (EPD) operates a general air quality monitoring station in Kwun Tong to monitor the air quality of the region. According to the data collected by the station, there was no significant change in air quality during the berthing of "Mariner of the Seas" at the Terminal on 12 June.

To improve air quality and reduce emissions from marine vessels, the EPD launched in September 2012 a three-year Incentive Scheme in which ocean-going vessels (including cruise vessels) that switch to low-sulphur fuel while berthing in Hong Kong waters would enjoy 50% reduction in port facilities and light dues. "Mariner of the Seas" also participated in this Incentive Scheme and switched to low-sulphur fuel while berthing at the Terminal on 12 June. We will continue to proactively encourage cruise liners to participate in this Incentive Scheme. In addition, the EPD is planning to mandate that all ocean-going vessels switch to low-sulphur fuel while berthing in Hong Kong waters, and will report the progress of this initiative to the Panel on Environmental Affairs of the Legislative Council in July 2013. The EPD has also commissioned the Electrical and Mechanical Services Department (EMSD) to undertake a technical feasibility study on the installation of onshore power supply facilities at the Terminal. The study is expected to be completed in 2014.

**MR PAUL TSE** (in Cantonese): *President, there is a common saying describing the helplessness of "the chicken kept by Tanka boat dwellers", namely frustration caused by thirst not being quenched despite water in sight. This is comparable to the situation of residents in Kwun Tong and Kowloon East. They have watched the site lying idle under the sun for 10-odd year, and now, the Terminal is eventually completed. However, the site is for their eyes only. Before that, the site was within walking distance, or just a few minutes of jog. But now, despite all the twists and turns on road, they can hardly access the site. This problem has significantly reduced the benefits brought forth by the Terminal.*

*The Government says that the linkage system will be completed in 2023 the earliest. We can imagine that it will be a long wait. The public may not know how much longer they have to wait, and they may not see the completion despite another 10-year wait. To realize the CBD2 plan and to enable residents in Kwun Tong to enjoy the economic benefits in actuality under such circumstance, will the authorities consider adopting a simpler or more convenient approach to address the problem? For instance, it may consider providing tram services or constructing at least one flyover, so that the public need not wait for the linkage system which will only be available in 2023 the earliest.*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Commerce and Economic Development, please.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Let me try to tackle this supplementary question first, and then I would defer to the Secretary for Development. Residents in Kwun Tong, like residents in other districts, may make use of the diversified transport arrangements to go to the Terminal, which include taxis and green minibuses. During the development planning of the Terminal at Kai Tak, the Government had commissioned a consultancy to conduct analyses and studies, and the latter concluded that a green minibus route connecting Kowloon Bay MTR Station and the Terminal would be adequate to cope with the demand at the present stage. Regarding the linkage system mentioned by Mr TSE earlier, I think he should be referring to the EFLS mentioned by me in the main reply. In this connection, I would like to defer to the Secretary for Development for an answer.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, we all know that the approach of developing and completion in phases is adopted in the planning of the Kai Tak Development Area (KTDA). According to our plan, environmental-friendly feeder bus services will be provided before the completion of all development projects and the EFLS. Regarding the proposal of using trams mentioned by Mr Paul TSE earlier, we have conducted studies in

this connection and concluded that it is not quite feasible technically. Since trams usually need to run on dedicated and two-way lanes, tram rails will take up considerable space. Members know that roads in the urban area, Kwun Tong in particular, are relatively narrow, it is thus technically infeasible to find adequate space for the laying of the two-way tram rails.

**MR VINCENT FANG** (in Cantonese): *President, the retail industry welcomes the construction of the new Terminal by the Government. However, as Mr Paul TSE said earlier, the Government has been extremely careless in the provision of ancillary facilities. The new Terminal is entirely different from the Ocean Terminal, for there are no shops and hotels in the vicinity of the new Terminal, and I would say it is barren. On the 12th of this month, the new Terminal handled the inaugural berthing of a cruise liner. As far as I know, the next cruise liner to berth at the Terminal will only arrive in the middle of October. In other words, between now and the mid-October, the new Terminal will not be used by any cruise liners. In future, no ancillary facilities will be provided. May I ask the Government of the number of years of the payback period and how that figure came about?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Commerce and Economic Development, please.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Thanks to Mr Vincent FANG for the supplementary question. The KTDA project is huge in scale. Members may know that the Terminal is the first project completed in the KTDA. As such, we really need time to improve and increase the ancillary facilities in the surrounding area gradually. Certainly, these facilities will greatly increase the utilization rate of the Terminal, for the visitor flow will naturally increase upon the completion of other ancillary facilities. However, in the meantime, we have tried our best to facilitate the public and the industry in using the Terminal by means of design and various arrangements. In terms of design, we have adopted the wide-span column

design to minimize the number of columns, so that the Terminal can be used for other functions like holding banquets or exhibitions when the berths are clear.

In the inaugural berthing at the Terminal, passengers had to use the loading bridge to approach the passenger terminal, but this would be limited to the inaugural berthing when other works at the Terminal were still in progress. We hope to draw on the experience of the inaugural berthing and improve the arrangements where necessary. The hiccups in communication about taxi services this time were a case in point, which is the experience we gained in the inaugural berthing. We will improve the measures continuously to make it more convenient for the public to use the new Terminal.

In future, we will examine ways to fully utilize the new Terminal with the Hong Kong Tourism Board, the relevant industries and cruise companies, with a view to increasing its cost-effectiveness significantly. In September, we will launch some activities at the Terminal to promote cruise service.

President, I would also like to point out that upon the opening of the park on the landscaped deck in the third quarter this year, the public will have access to one of the largest rooftop park in Hong Kong.

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

**MR VINCENT FANG** (in Cantonese): *President, he has not answered my question. I asked whether the Government had made a rough estimate of the number of years required to recover the cost.*

**PRESIDENT** (in Cantonese): Secretary, is there any estimate of the duration of the payback period?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, we had pointed out at the beginning of the planning of the Terminal that by 2023, the new Terminal would bring about economic benefits of \$2.5 to \$2.6 billions. This is the estimate we have made in terms of economic benefit. Certainly, a more accurate estimate can only be made with reference to the development of the new Terminal and the completion of other ancillary facilities.

**MISS CHAN YUEN-HAN** (in Cantonese): *President, the supplementary questions raised by colleagues earlier have been asked repeatedly during the 10-odd year planning period of the site of the old airport. I will not dwell on these but will put forth some new opinions.*

*The Secretary mentioned environmental protection in his reply to Mr Paul TSE's question, but he fell short of responding to certain views in society now. For instance, we have asked the Government how it will handle the pollution and emission problems during the berthing of cruise liners. Undoubtedly, the Government has done something in this respect. It will submit the relevant legislation to the Legislative Council in July, so that we can discuss the issue on the switch to "light oil" from "heavy oil" by cruise liners upon berthing. We notice the effort made in this regard, and we hope that the process can be completed as soon as possible, for the onshore power supply facilities will be completed only a few years later, and during the interim the berthing of cruise liners may pose a grave air pollution problem to Kowloon East.*

*But since I notice that the Secretary has provided a timetable in the reply, I will not pursue this further. I am going to ask about the issue arousing a heated debate this morning, that is, waste treatment. Cruise liners at berth will generate a lot of waste. I think Members who have been on cruises know that these liners generate a lot of waste ..... I am glad that the Secretary is in the Chamber now. How will the Government handle the waste? Will the waste be handled on site or shipped to other places, or will the waste be handled in the vicinity? Secretary WONG Kam-sing, this issue has to be considered.*



*May I ask the Government of the preparation it has made in this respect? We need to prepare for this, for the second cruise liner will berth at Hong Kong in October, and the number of liners arriving will increase as berths at the new Terminal come into operation in succession .....*

**PRESIDENT** (in Cantonese): Miss CHAN, you have raised your supplementary question, so please let the Secretary reply.

**MISS CHAN YUEN-HAN** (in Cantonese): *President, I will finish very soon. The scale of the Terminal will be larger than that of the Star Ferry Pier, and I hope Secretary WONG Kam-sing will tell us what preparation on the whole has the Government made?*

**PRESIDENT** (in Cantonese): Miss CHAN, please be seated. Members should avoid giving views irrelevant to the supplementary question when they raise questions. Which Secretary will answer this? Secretary for Commerce and Economic Development, please.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): I will try to talk about the concern about environmental protection, though this is not within my purview. The Honourable Member's earlier remark is accurate. It is also mentioned in the Policy Address that we are extremely concerned about the environment of the KTDA, and thus we have mentioned and announced a series of measures to improve the air quality in the vicinity.

I understand that the Member's question is on waste disposal, but since she mentioned onshore power supply, I would like to talk about issues in this respect. We have announced the installation of onshore power supply facilities, yet the facilities must conform to the international standard. The International Electrotechnical Commission has published only recently the first part of the standards, thus we can design the onshore power supply facilities only after we have gained knowledge of the international standards. The second part of the standard will be announced at a later time this year. However, we will not wait for the announcement of the standard in the second part. The EPD has

commissioned the EMSD to undertake a feasibility study. We will carry out the work as soon as possible.

It is evident that the Government is committed in this area. Since we attach the utmost importance to environmental protection, I believe as far as waste disposal is concerned, the measures in the KTDA will surely conform to the environmental protection standards. As for the details, however, I have to defer to the Environment Bureau.

**MR WU CHI-WAI** (in Cantonese): *President, the new Terminal is situated inside the KTDA. However, the KTDA is comparable to an isolated island with no transport support, where other ancillary facilities cannot operate in reasonable conditions. May I ask the Secretary whether other development blueprint has been drawn up for the new Terminal other than the usual purpose of receiving ocean-going vessels to maximize its economic benefits? Does the Government have plans to use the vast area in the Terminal for the staging of exhibitions or sale activities, so as to build up a more regular and relatively stable customer base to achieve complementarity with the ancillary facilities in the vicinity?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, the Terminal is directly related to and facilitating the cruise business. Apart from this, it will also bring benefits to the retail industry, tourism industry and the catering industry in Hong Kong as a whole. As I pointed out earlier, other than serving as the pier for the alighting and boarding of passengers, facilities at the Terminal may be used for holding other activities like exhibitions or banquets when the berths at the Terminal are clear. Moreover, an ancillary commercial area of 5 600 sq m is provided in the Terminal for business activities. Certainly, when there are cruise liners berthed at the Terminal, arriving passengers will contribute to Hong Kong economy on the commercial front. Therefore, the economic ripple effect brought forth by the Terminal is extremely clear and obvious.

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

**MR WU CHI-WAI** (in Cantonese): *He has not answered my question. My question is: What plans does the Government have on utilizing the relevant facilities at the Terminal? What are the plans in this aspect? The Secretary has only given an account of the facilities at the Terminal. We surely know these facilities, yet he has not mentioned the plans.*

**PRESIDENT** (in Cantonese): What plans are you referring to?

**MR WU CHI-WAI** (in Cantonese): *I am asking the Secretary about the utilization of the relevant commercial facilities and space.*

**PRESIDENT** (in Cantonese): Secretary, how will these commercial facilities be used?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, perhaps I shall try to tackle this again. Cruise passengers arriving Hong Kong at the Terminal will stimulate other commercial activities in Hong Kong. For instance, passengers will visit different scenic spots, and the tourism sector will directly benefit from this. As for tourism facilities, the new Terminal includes an ancillary commercial area and a garden on the landscaped deck for public use. Certainly, at times when berths at the terminal are clear, we will utilize the venues as far as possible for the staging of exhibitions, banquets and conference activities. The venues at the new Terminal can be used for these activities, for regard to development in this aspect is carried in the design of the Terminal.

**MR CHUNG KWOK-PAN** (in Cantonese): *President, after 12 June, the second cruise liner using the Terminal will not arrive at Hong Kong till October. May I*

*ask whether one of the reasons is that this period is the typhoon season? If typhoon is a concern, may I ask ..... Given the larger size of cruise liners now, may I ask whether the safety of liners will be affected under tropical cyclone warning signal No.3 or No.8? If the safety of liners will only be affected under tropical cyclone warning signal No.8 ..... Since the tropical cyclone warning signal No.8 will be hoisted once or twice every year, will the present arrangement be a waste of four months' time, where the new Terminal is left idle without generating any benefit?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Many thanks to Mr CHUNG Kwok-pan for the supplementary question. Cruise companies will take into consideration a host of factors in designing the itinerary of their fleets, and typhoon season is a major factor for consideration. Cruise companies cannot predict the month, the week or the exact date Hong Kong will be struck by typhoon when they prepared the itinerary a year or two ago. In this connection, we have to note that cruise companies will assess and consider a lot of factors in arranging for their cruise liners to visit different places.

The second cruise liner will arrive at Hong Kong only in October. One of the reasons is that works at the new Terminal are still underway. It is the general practice of cruise companies to prepare the itinerary of their cruise fleets a year or two in advance, and the trade will be confident of arranging for liners to come to Hong Kong only when the overall construction of the new Terminal is completed. The new Terminal had come into operation on 12 and 13 June and received the first cruise liner. Overall, visitors had seen the spectacular scenery on that night. Comments about the arrangement were extremely positive. I believe that with the impressive environment and facilities, we will attract more cruise companies to arrange for their fleets to berth at Hong Kong.

**PRESIDENT** (in Cantonese): This Council has spent 23 minutes on this question. Oral questions end here.

**WRITTEN ANSWERS TO QUESTIONS****HOS Secondary Market**

7. **MR VINCENT FANG** (in Chinese): *President, the Government launched this year a scheme with a quota of 5 000 under which eligible White Form (WF) applicants for the Home Ownership Scheme (HOS) may purchase, without paying premium, flats on the HOS Secondary Market (Secondary Market) within a specified period. It has been reported that the first batch of 2 500 successful applicants are anxious to purchase HOS flats, but the per-square-foot prices of HOS flats have risen rapidly due to an insufficient supply of such flats. The per-square-foot prices of certain flats have risen more than 20% since the announcement of the scheme in last July. The per-square-foot prices of some flats, after reckoning the premium payment, have even surpassed those of private residential flats. For example, the per-square-foot price of an HOS flat in Tseung Kwan O in the Secondary Market based on its saleable area is some \$6,400, meaning its per-square-foot price at the market value is over \$10,000. There are comments that a bubble is forming in the Secondary Market and this has driven the prices of some private residential flats to go up, which is detrimental to the healthy development of Hong Kong's property market and may make successful applicants bear a higher risk in purchasing HOS flats. In this connection, will the Government inform this Council:*

- (a) *whether it had, before launching the aforesaid scheme, assessed if the supply of flats in the Secondary Market was adequate to meet the demand of both Green Form and WF HOS applicants; if it had assessed, of a detailed breakdown of the estimated supply of HOS flats by district; if not, the reasons for that;*
- (b) *whether it will review the implementation of the aforesaid scheme, including its relationship with the rapid rise in the prices of HOS flats in the Secondary Market, the rate of increase in the prices of such flats over the past six months, the affordability of the successful applicants, the impact on the market of private residential flats, and so on; if it will, of the timetable and plan of the review; if not, the reasons for that; and*
- (c) *whether the Government will temporarily shelve the aforesaid scheme after allocation of the second batch of 2 500 of this year's*

*quota, so as to avoid the development of a bubble in the Secondary Market intensifying, and successful applicants bearing unnecessary risks of a property bubble; if it will, of the specific timetable and plan; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, the Government is aware of the aspirations for home ownership in the community. We also understand that some people look to HOS flats as their first step towards home ownership. To this end, the development of HOS is already part of our housing policy. Our planning target is to provide some 17 000 HOS flats over four years starting from 2016-2017 onwards and thereafter an annual average of 5 000 HOS flats. The first batch of about 2 100 HOS units to be completed in 2016-2017 are expected to be released for pre-sale by the end of 2014.

In response to the home ownership aspiration of those with WF status during the interim period from now until the first batch of new HOS flats are completed in 2016-2017, we have introduced an interim scheme whereby 5 000 WF buyers each year will have a chance to purchase HOS flats with premium not yet paid. The scheme can also facilitate the turnover of HOS flats, thereby revitalizing the Secondary Market. It also addresses the community's previous request in this regard.

The consolidated reply to Mr Vincent FANG's three-part question is as follows:

When the interim scheme was formulated, reference was drawn from the long-term planning target which is to provide about 5 000 HOS flats annually. As such, we have decided to allow 5 000 WF buyers to purchase second-hand subsidized sale flats with premium not yet paid before the first batch of new HOS flats are completed in 2016-2017, to address the home ownership needs of eligible people as soon as possible.

As to the supply of flats on the Secondary Market, it is affected by many factors, such as the preference of the flat owners, transaction prices and market sentiment, and so on. As at the first quarter of 2013, there were about 253 000 HOS flats, 122 000 Tenants Purchase Scheme flats and 9 100 Flat-for-Sale

Scheme flats under the Hong Kong Housing Society with premium not yet paid in Hong Kong. Flats with premium not yet paid may, in principle, be traded on the Secondary Market. Nonetheless, it is for the individual owners to decide whether, and if so when, they would sell their flats. We are unable to ascertain their wishes. This is also a characteristic of the Secondary Market, which is not the same as the first-hand sale market.

As regards prices, we have been monitoring the price changes in the property market closely. We note that under the current environment with low interest rate and abundant liquidity, the overall property prices (including the transaction prices of second-hand HOS flats) have remained high. The community is also concerned about the increase in prices of second-hand HOS flats with premium not yet paid. However, changes in property prices (including the changes in prices of HOS flats with premium not yet paid on the Secondary Market) are affected by many factors, such as the supply of residential flats, the volume of transactions, the situation of mortgage lending, interest rates, the affordability of those who wish to buy, the economic situation, people's expectations regarding the prospect of the market, as well as any measures that the Government may take that impact on the market. It is simply not safe to come to the conclusion that the changes in the prices of second-hand HOS flats arise simply due to the implementation of the interim scheme.

We have divided the quota of 5 000 into two batches of 2 500, so that the market can absorb the increase in potential buyers in a gradual and managed manner. Moreover, to address the community's concerns on possible speculative activities on the Secondary Market as a corollary of the interim scheme, we have also introduced resale restrictions for WF buyers under the Secondary Market Scheme. In the first two years after the transaction, WF buyers cannot sell their flats on the Secondary Market. From the third year onwards, they can sell their HOS flats with premium not yet paid to eligible persons as certified by the Hong Kong Housing Authority (HA). After the WF buyers purchase their flats, if they want to sell their flats on the open market, they need to pay the premium first. The resale restrictions are set by drawing reference from the resale restrictions for current HOS flats. The current resale restriction made reference to the HA's resale restriction on HOS, and is known to the public, easy to understand and is widely accepted. Furthermore, the Government has also put in place specific measures (notably, the Special Stamp Duty) to curb speculation.

The interim scheme is still at an early phase of implementation. The HA has just issued approval letters to the first batch of 2 500 successful applicants on 31 May. The Certificate for Eligibility to Purchase (CEP) obtained by the successful applicants is valid for six months, but a one-off renewal for another six months upon its expiry may be obtained. As to the remaining 2 500 successful applicants, the HA will issue approval letters by the end of December. In other words, the CEP for the 5 000 successful applicants will expire by the end of 2014 at the latest. We will keep in view the implementation of the interim scheme, and evaluate the effectiveness of the scheme based on the response of the applicants and the market before deciding whether to launch a new round of the scheme. Moreover, the Government has been reminding all buyers of residential properties to exercise caution and should make the relevant decisions based on their own affordability.

### **Business Promotion of Kai Tak Cruise Terminal**

8. **MR YIU SI-WING** (in Chinese): *President, it is learnt that there have been a number of negative press reports in recent days about the Cruise Terminal (the Terminal) located in the Kai Tak Development Area, which was built at a cost of over \$8 billion. Such reports include serious water seepage at the terminal building prior to its opening, chaotic transport arrangements on the day of its official opening, as well as rodent infestation at the terminal building occurred in recent days. On the other hand, some members of the community worry that the Terminal may turn into a "white elephant" project due to insufficient patronage and that Hong Kong's international image will be tarnished if the aforesaid problems are not rectified expeditiously. In this connection, will the Government inform this Council:*

- (a) *of the improvement measures taken by the authorities to tackle the aforesaid problems of the facilities, such as rodent infestation and water seepage, so as to bring the software and hardware of the Terminal in line with international standards;*
- (b) *as it has been reported that the Terminal, after receiving the first cruise liner on the 12th of this month, will not receive the second cruise liner until October, and there will only be a total of 20-odd cruise liners berthing at the Terminal in the coming year, that is, the*



*usage time for the whole year will be merely one month or so, of the measures taken by the authorities to boost the usage rate of the Terminal; and*

- (c) *as the Central Government announced in June last year the measure that Mainland tour groups taking cruises from Hong Kong to Taiwan would be permitted to continue to take the same cruise to Japan or South Korea before returning to the Mainland, of the progress of the authorities' discussion with the Mainland authorities in respect of the implementation of the relevant measures (including the visa arrangements and timetable)?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, the inaugural berthing of "Mariner of the Seas" at the Kai Tak Cruise Terminal (the Terminal) took place on 12 June 2013. The arrangements during this ship call were generally smooth. Both the facilities and the exterior design of the Terminal won high acclaim from the cruise company and passengers. As is the case with other newly completed major infrastructures, the terminal operator and relevant parties need time to familiarize themselves with the environment and operations of the Terminal at the initial stage upon commissioning. The terminal operator and the relevant parties will draw on their experience with the berthing of "Mariner of the Seas" (for example, in respect of traffic arrangements) to make improvements and provide better service in future.

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

- (a) The contractors of the terminal building have been taking pest control measures. The Tourism Commission (TC) has also worked closely with the Architectural Services Department (ArchSD) and the Food and Environmental Hygiene Department (FEHD) to follow up the case. The ArchSD has urged the contractors to step up inspections and control measures to improve the environmental hygiene of the works areas. The FEHD has advised the relevant parties on rodent control measures and taken follow-up actions. As for the leakage in some parts of the terminal building after a heavy rainstorm of black signal level earlier on, such seepage was

unavoidable when there was continuous heavy rainstorm as there were ongoing minor works at the terminal building (for example, connection works for stormwater drainage). Most of the affected fittings have been replaced. The berthing of "Mariner of the Seas" has not been affected.

- (b) Given the huge scale of the Kai Tak Development, it takes time for the facilities in the development area to be completed in phases. As the first completed facility in the development area, the Terminal needs time to develop its business. In particular, it will face various constraints during its first few years of operation. As a matter of fact, most cruise companies already finalized the itineraries and made berth bookings for their cruise fleets for 2013 and 2014 one or two years ago. We hope that, with the concerted efforts of the Government, the trade and the terminal operator, the cruise business and the leasing of the ancillary commercial area at the Terminal will grow steadily.

In designing the Terminal, we have taken into account the seasonal nature of cruise operations, and hence the possible low utilization of the Terminal during certain times of the year (for example, the typhoon season). To maximize the flexibility in the utilization of the Terminal, the terminal building has adopted a wide span layout with fewer structural columns. The design enables the waiting halls in the Terminal to be used for conferences, exhibitions and banquets during the non-peak seasons of cruise operations. The terminal operator has already expressed interest in hosting functions in the terminal building to optimize the use of terminal and generate additional revenue. The TC is also working with the trade to organize a Cruise Holiday Expo at the terminal building in September this year to promote cruise tourism and demonstrate the versatility of the Terminal.

- (c) To support the development of the cruise industry in Hong Kong, the Central People's Government announced in June 2012 that Mainland tour groups taking cruises from Hong Kong to Taiwan could visit Japan or Korea in the same journey before returning to the Mainland. The new policy will facilitate cruise companies to organize more

diversified itineraries for Mainland tourists and attract them to join cruise journeys from Hong Kong. This is also conducive to encouraging cruise companies to deploy more ships to the Asia-Pacific Region, thereby promoting the development of the cruise industry in the Mainland and Hong Kong. We will continue to work with the China National Tourism Administration and cruise companies to work out the detailed arrangements of this new policy.

To complement the new Central People's Government policy, the Government has already provided additional resources to the Hong Kong Tourism Board (HKTB) for promoting cruise tourism. Apart from attracting more cruise liners to visit Hong Kong through the co-op marketing fund, the HKTB also steps up its promotion activities in the Mainland, especially in the Southern part of the Mainland, through advertising, public relations initiatives and digital marketing, to stimulate the interest of its residents in cruise travel. It also plans to set up designated teams in major Mainland cities, including Guangzhou and Shanghai, to step up cruise tourism promotion and encourage more Mainland visitors to join cruise journeys from Hong Kong.

### **Assistance Scheme for Hawkers in Fixed-pitch Hawker Areas**

9. **MR WONG KWOK-KIN** (in Chinese): *President, this Council had approved a funding allocation of \$230 million for launching a five-year assistance scheme (the Assistance Scheme) for the licensed hawkers (hawkers) operating in 43 fixed-pitch hawker areas (hawker areas). Those hawkers carrying out reconstruction of their stalls in situ, moving their stalls to other pitch spaces or opting for voluntary surrender of their hawker licences will be granted a one-off ex gratia payment, but the hawkers' assistants (the assistants) will not benefit from the Assistance Scheme. In addition, some hawkers have relayed to me that due to the redevelopment of the Kwun Tong town centre, the Mut Wah Street Temporary Hawker Bazaar (Mut Wah Street Bazaar) will be relocated to a new temporary hawker bazaar in October this year, affecting 80-odd stall operators. Although relocation has been arranged for the hawkers concerned, it has been learnt that some of them intend to close down the business, and their*

*assistants will not benefit from the relocation project. In this connection, will the Government inform this Council:*

- (a) given that in 2010, the authorities gave priority to the existing registered assistants with experience in the hawking trade to select 70% of the vacant fixed hawker pitches, of the number of registered assistants who selected the hawker pitches in the end; of the current number of assistants registered with the Food and Environmental Hygiene Department (FEHD);*
- (b) whether it has estimated the number of hawker licences to be surrendered under the Assistance Scheme; as the authorities had indicated at a committee meeting of this Council that they would consider re-issuing the surrendered hawker licences for application by interested parties, when the authorities will make the relevant decision; whether the authorities will make reference to the approach mentioned in part (a) to give priority to the registered assistants in applying for vacant fixed hawker pitches; if they will, of the details; if not, the reasons for that;*
- (c) given that when starting off the buyout package for the live poultry trade in 2008, the authorities had, apart from providing grants to live poultry retailers who voluntarily surrendered their licences, provided one-off grants to the affected local live poultry workers as well, whether the authorities will make reference to that approach and provide grants to the registered assistants affected by the hawkers' surrendering of licences; if they will, of the details; if not, the reasons for that; whether the authorities will consider implementing other measures to help those registered assistants who are affected; and*
- (d) given that the Mut Wah Street Bazaar is not one of the 43 hawker areas under the Assistance Scheme, and the affected hawkers cannot obtain the ex gratia payment of \$120,000 even if they surrender their licences, whether the authorities will consider extending the coverage of the Assistance Scheme to cover other hawkers who are affected by urban redevelopment projects and voluntarily surrender their licences; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, the Kwun Tong Town Centre redevelopment project of the Urban Renewal Authority (URA) covers the Mut Wah Street Bazaar and the Hip Wo Street Hawker Bazaar in Kwun Tong. The URA is now constructing a two-storey transitional hawker bazaar at the original site of the Kwun Tong Government Offices Building to provide fixed hawker pitches for the purpose of accommodating the licensed stalls in the two hawker bazaars named above whilst actions are being taken to redevelop the on-street hawker stalls in the district. Apart from providing stalls with roller shutters facilities at the transitional hawker bazaar, the URA will also provide relocation subsidies to hawkers affected by the relocation. Upon the relocation of hawkers to the transitional hawker bazaar, their registered assistants may continue to assist in the business there. Subject to the support of the Kwun Tong District Council, the FEHD may exercise discretion to allocate vacant stalls remaining in the transitional hawker bazaar to those registered assistants of hawkers originally operating in the two hawker bazaars if they are interested in applying for the hawker stalls.

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

- (a) According to records, there are currently around 5 300 registered assistants in the hawking trade in Hong Kong. Following the hawker licensing policy review in 2008-2009, the Administration had in 2010 given priority to applicants who were registered assistants allowing them to apply for 70% of the vacant fixed-pitch hawker stalls that were suitable for re-issue of licences. The selection was decided by ballot. Of the 218 licences issued, 95 were issued to registered assistants.
- (b) The Government has not made any projection for the number of fixed-pitch hawker licences that may be voluntarily surrendered under the Assistance Scheme for Hawkers in Fixed-pitch Hawker Areas (Assistance Scheme). That said, for the purpose of drawing up the projected expenditure of the Assistance Scheme as set out in the paper submitted to the Finance Committee of the Legislative Council for funding approval, we have cited an expenditure level that is projected on the basis of the crude assumption that 20% of eligible hawkers will opt for surrender of licences.

At the meetings of the Panel on Food Safety and Environmental Hygiene and the Finance Committee of the Legislative Council held in February and March this year respectively, some Members suggested that if the voluntary licence surrender arrangement received overwhelming response, resulting in a large number of vacant stalls in an individual hawker area which far exceeded the number of stalls to be relocated, hence affecting its sustainability, the Administration should consider re-issuing new hawker licences to fill the vacant stalls. The Government has noted the suggestion and will re-visit it after the Assistance Scheme has been implemented for a period of time. The circumstances of each hawker area, including the business environment, fire safety and environmental hygiene considerations, and the views of the District Councils and local residents will be duly taken into account. If the suggestion is accepted at the end of the day, the Government will also make reference to past experience and the views of stakeholders when deciding how to re-issue new hawker licences.

- (c) The Assistance Scheme aims to provide financial assistance to hawkers in the 43 hawkers areas for stall reconstruction and relocation in order to expedite the work of reducing fire risks. Besides, an *ex gratia* payment is offered under the Assistance Scheme for voluntary surrender of hawker licences to speed up the release of pitches and hence facilitate the relocation of stalls which pose higher fire risks. The arrangement of voluntary surrender of hawker licences under the Assistance Scheme is consistent with those under previous voluntary surrender schemes for hawker licences. The Government will offer an *ex gratia* payment to eligible licence holders as an assistance for their retirement or transition to other trades.

Some licence holders may employ one or more assistants to help them operate their hawking business. The FEHD's role has been to register such stall assistants for law-enforcement purpose.

The *ex gratia* payment of \$120,000 offered to licence holders under the voluntary surrender of hawker licences arrangement of the Assistance Scheme is well above the amount granted under similar

voluntary surrender schemes in the past. For licence holders who have decided to surrender their hawkker licences, it is incumbent upon them to settle their relationship with their assistants themselves.

- (d) Currently, some hawkker stalls are close to the staircase discharge points of adjacent buildings. In the event of a fire at the stalls, flames, dense smoke and hot fumes may well block the discharge points of buildings, creating the chimney effect and obstructing the means of escape. To reduce fire risks posed by on-street hawking activities in the hawkker areas, the Government considers it necessary to improve the fire safety and design of hawkker stalls, and to relocate them away from staircase discharge points of buildings, access for fire appliance or locations that may block the operation of aerial ladders. The Assistance Scheme aims to provide financial assistance to hawkkers in the hawkker areas for stall reconstruction and relocation in order to expedite the work in reducing fire risks. As for other hawkkers not in the hawkker areas, including those operating in hawkker bazaars, wall stalls and newspaper stalls and so on, they are scattered over different off-street locations or different spots on street. These stalls are not located in densely-populated districts or do not congregate on street. In either case, the fire risks posed to adjacent buildings are relatively low. They are therefore not covered in the Assistance Scheme.

### **Promotion of Agricultural Development in Hong Kong**

10. **MR STEVEN HO** (in Chinese): *President, according to statistics of the Government, the total area of agricultural lands in Hong Kong has been decreasing in the past 16 years while abandoned and fallow agricultural lands have all along accounted for about 70% of agricultural lands in total in recent years. On the other hand, the 2013 Policy Address has not put forward any new policy to facilitate agricultural development. Some members of the public have relayed to me that there are now young people who wish to join the agriculture industry and farmers (whose land had been resumed by the Government for land development) who wish to rejoin it, but they are unable to find suitable agricultural land. They have also pointed out that the Agriculture, Fisheries and Conservation Department (AFCD) is currently responsible for administering*

three loan funds with a total accumulated deposit standing at \$45 million, and the Agricultural Development Fund administered by the Vegetable Marketing Organization (VMO) has about \$200 million available. Yet, such funds have not been unable to help enhance the agricultural development in Hong Kong. Regarding the agricultural development in Hong Kong, will the Government inform this Council:

- (a) of the area of the agricultural lands resumed by the Government for various development projects, the respective areas of active and abandoned agricultural lands at the time of land resumption, as well as the number of farmers affected by land resumption (set out in the table below), in each of the past five years; the measures taken by the Government to help those affected farmers;

Year	Area of agricultural lands resumed by the Government (hectare)	Area of active agricultural lands therein (hectare)	Area of abandoned agricultural lands therein (hectare)	Number of farmers affected by resumption of agricultural lands
2008				
2009				
2010				
2011				
2012				

- (b) whether the Government had zoned any land as agricultural land in the past three years to promote agricultural development; if it had, of the area of new agricultural land; if not, the reasons for that;
- (c) whether the Government has considered how to optimize the use of the existing abandoned and fallow agricultural lands, landfills, idle lands and lands along the shore of outlying islands (for example, establishing an agricultural research centre to encourage innovative agricultural development), and further build up the reputation of the brand of local agricultural produce as being safe and reliable; if it has considered, of the details; if not, the reasons for that;



- (d) *whether the Government will draw reference from the modes of sustainable development which combines "ecology, living and production" in neighbouring regions of Hong Kong (such as Taiwan), and introduce measures to develop ecological farms which combine organic farming with green and leisure farming; if it will, of the details; if not, the reasons for that;*
- (e) *whether the Government will consider enhancing the existing loans and development funds relating to the agriculture industry, or set up an agriculture industry sustainable development fund so as to promote the sustainable development of the agriculture industry; if it will, of the details; if not, the reasons for that; and*
- (f) *whether the Government has formulated any policy to facilitate the application of new agricultural technologies in the agriculture industry in Hong Kong, and encourage the development of new trades of the agriculture industry; if it has, of the details; if not, the reasons for that, and whether relevant policies will be formulated?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, it is the Government's existing policy to facilitate agricultural development through the provision of basic infrastructure, technical support and low-interest loans to farmers. At the same time, we make full use of the Agricultural Development Fund under the VMO to facilitate the further development of local agriculture, enhance the productivity and business viability of the industry, and develop modern and environmental-friendly farming technologies with emphasis on preservation of natural resources and the agricultural ecology. This will help farmers produce good quality and high-value agricultural products that are safe for consumption and contribute to the sustainable development of the industry.

Under this policy, the AFCD actively encourages local farmers to develop organic farming and gives them the necessary support. Through the Organic Farming Support Service, it provides advice and technical support for those farmers who wish to switch to organic farming from traditional farming. In addition, the AFCD promotes the production and sale of local organic agricultural products jointly with the VMO and the Federation of Vegetable Marketing Co-operative Societies, Ltd. As at the end of May 2013, 217 farms are participating in the Organic Farming Support Service, producing about 5 tonnes

of organic agricultural products each day for the local market. At present, there are more than 37 retail outlets for organic vegetable under the VMO marketing network. Besides, the AFCD supports the Hong Kong Organic Resource Centre in its endeavours to educate the public on organic farming and promote the certification of organic products.

The AFCD organizes from time to time talks and on-farm demonstrations for farmers, briefing them on improved varieties of agricultural products and new farming techniques. Quality produce developed in recent years includes red flesh rock melon, seedless water melon, yellow flesh water melon, long horn pepper, round eggplant, potato and organic strawberry, and so on.

The Government has also actively assisted the industry in developing quality brand names. At present, 265 vegetable farms in the territory have participated in the Accredited Farm Scheme. The Scheme aims at promoting good horticultural practice and environmental-friendly production, and encouraging integrated pest management and the proper and safe use of pesticides. Farm inspections are conducted to ensure steady production of quality vegetables that are safe for consumption. The AFCD helps the industry set up weekend farmers' markets and organizes large-scale carnivals, such as the annual FarmFest which attracts over 100 participating local farmers and fishermen and more than 100 000 visitors every year. These events have helped showcase local agricultural and fishery products and promote local brand names.

Moreover, the VMO set up in 1988-1989 the Agricultural Development Fund with funding derived from its operating profits. The Fund enables the AFCD and the farming industry to launch agricultural development programmes. Apart from the abovementioned programmes and activities, examples include the "Controlled Environment Agriculture and Hydroponic" technology which has recently been introduced and is being promoted for use in local farming. Between 2008 and 2012, the Fund provided about \$140 million for various projects. About \$170 million is currently available under the Fund.

The AFCD is also administering three loan funds (including the Kadoorie Agriculture Aid Loan Fund, J. E. Joseph Trust Fund and Vegetable Marketing Organization Loan Fund) which provide loans to farmers for farm development and operation. The total accumulated deposit under the three funds now amounts to over \$47 million. These funds are noted for their user-friendly application procedures, low interest rates, the availability of unsecured loans up to

\$130,000 and their flexible repayment period. Between 2008 and 2012, loans of over \$42 million were offered to 411 farmers under the three funds.

The Government will carry on with its efforts on the above fronts to support the sustainable development of the local farming industry.

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

- (a) According to the records of the Lands Department (LandsD), over the past five years, about 107 hectares of private agricultural land (that is, private land classified for agricultural use as revealed by the relevant records registered with the Land Registry) in the New Territories were resumed by the Government for various public works projects. The relevant area of land resumed was about 56 hectares (2008), 2 hectares (2009), 29 hectares (2010), 7 hectares (2011) and 13 hectares (2012) respectively. The LandsD does not have information concerning the agricultural activities on such agricultural land resumed.

Rehabilitation allowance is payable to genuine farmers (assessed by the AFCD) who are affected by land resumption for public purpose in the New Territories and eligible for public housing but who opt to continue farming elsewhere and give up their priority to public housing. In addition, under the existing policy, affected and eligible farmers may apply for other types of ex gratia allowances provided for genuine farmers. These allowances include crop compensation, disturbance allowance for cultivators, allowance for pig and poultry farmers, allowance for qualified farm structures on private land, and allowance for miscellaneous permanent improvements to farms. Over the past five years, the LandsD offered the above allowances to a total of 3 101 farmers. The relevant number of farmers was 1 280 (2008), 604 (2009), 593 (2010), 235 (2011) and 389 (2012) respectively.

- (b) In preparing statutory plans (including outline zoning plans and development permission area plans), the Planning Department will take into account the views of relevant government departments, including those of the AFCD, with a view to designating land suitable for agricultural use under the "Agriculture" (AGR) zone.

In 2010, a total of 3 050 hectares of land in the New Territories fell under the "AGR" zone. In the past three years, the area of land zoned "AGR" has increased from 3 050 hectares to 3 278 hectares. The newly increased land zoned "AGR" is mainly located in areas covered by the five statutory plans relating to the Closed Area<sup>(1)</sup>. It should be noted that there may still be some privately owned agricultural land that exists outside statutory plans or within Country Parks, and that "Agricultural Use" is always permitted in other land-use zonings such as "Village Type Development", "Green Belt" and "Conservation Area". As such, the above figures, which only give the total area of land bearing the "AGR" zone on statutory plans, do not represent the area of all the land that may be used for agricultural purposes in the territory.

- (c) At present, of the 3 278 hectares of land zoned as "Agriculture", nearly 70% are privately owned. Whether the land will be used for agricultural production is the decision of the landowners. As for those people who would like to engage in agricultural production, including those farmers being affected by land resumption who opt to continue farming elsewhere as referred to in part (a) above, the Government will, in the interest of sustaining the development of the local agriculture industry, support them through the provision of infrastructure, technical support and low-interest loans. For details, please refer to the first six paragraphs of this reply. In addition, to assist farmers who wish to engage or re-engage in farming, the AFCD serves as a facilitator by matching prospective tenants with landowners who intend to rent out their agricultural land. The farmers and landowners may enter into tenancy agreements themselves after negotiations. Ultimately it is for the landowners to decide whether or not to rent out their land for agricultural use. Over the past five years (from 2008 to 2012), the AFCD assisted 74 farmers in identifying land for agricultural rehabilitation, involving a total area of about 14 hectares.
- (d) The pursuit of a healthy lifestyle in recent years has been such a rising trend that more and more farms are now open to public visits. These farms have evolved from traditional ones solely engaged in

(1) The relevant statutory plans include the Development Permission Areas Plans for Sha Tau Kok, Ta Kwu Ling North, Man Kam To, Lin Ma Hang and Ma Tso Lung and Hoo Hok Wai.

agricultural production to leisure farms serving multiple purposes of production, recreation and education. In keeping with such developments, the AFCD has published and distributed, on a yearly basis since 2010, "A Guide to Hong Kong Leisure Farms" which provides information on about 120 leisure farms. An interactive webpage <[http://fedvmcs.org/farm\\_index.php](http://fedvmcs.org/farm_index.php)> has also been launched for use by members of the public who are interested in visiting the diverse range of leisure farms in Hong Kong. By facilitating diversification, we hope to further promote sustainable development of the local farming industry.

- (e) As has been highlighted in the fifth paragraph above, the AFCD makes good use of the Agricultural Development Fund available under the VMO since 1988-1989 to launch agricultural development programmes in collaboration with the farming industry. Notable examples include the Accredited Farm Scheme, the annual FarmFest as well as the "Controlled Environment Agriculture and Hydroponic" technology which has recently been introduced and promoted for use in local farming. The AFCD will continue to make good use of the Fund to further promote the development of the local farming industry in collaboration with the trade.

Through the three loan funds (including the Kadoorie Agriculture Aid Loan Fund, J. E. Joseph Trust Fund and Vegetable Marketing Organization Loan Fund) administered by the AFCD, loans are made available to farmers for farm development and operation. The AFCD will review the industry's demand for funding from time to time to ensure that the funds could better meet the needs of recipients.

- (f) Hong Kong is a highly urbanized city with limited land resources. In accordance with the policy mentioned in the first paragraph above, the AFCD, when developing new farming technologies, will actively explore ways to use land resources more effectively. The Controlled Environment Hydroponic Research and Development Centre officially opened in March 2013, is one such example. In collaboration with the VMO, the AFCD has brought in from overseas the "Controlled Environment Hydroponic" method for local use on a trial basis. With the adoption of sophisticated controlled

environment technology to maintain the best conditions for growing vegetables indoor, this new method of water cultivation enables us to produce ready-to-eat baby leaf salad vegetables which are free of contamination. As the controlled environment hydroponic operations are highly adaptive in terms of site requirements, vacant units in factory buildings may be used as production bases. This will promote the utilization of surplus accommodation in factory buildings and relieve the demand for farmland. Besides, as the "Controlled Environment Hydroponic" method allows multi-layer vertical production, the area required is much smaller than what would otherwise be needed to deliver the same amount of production through conventional farming. It is therefore well suited for use in a place like Hong Kong, a highly urbanized city where land is in short supply.

### **Air-conditioning Systems in Public Markets**

11. **MISS CHAN YUEN-HAN** (in Chinese): *President, it has been learnt that Shek Wu Hui Market in Sheung Shui, which was commissioned in the early 90s of the last century, is the first public market installed with an air-conditioning (A/C) system in Hong Kong. However, some stall operators of the market have relayed to me that the Market has been in use for almost two decades and its A/C system has been ageing. For instance, the A/C system had broken down last year and this year, and some A/C units even had to cease operation recently, resulting in excessively high temperature in the Market. The worsening business environment has seriously affected the stall operators and patrons. In this connection, will the Government inform this Council:*

- (a) *of the number of failures of the A/C systems in the public markets in Hong Kong in the past three years (set out by market);*
- (b) *of the respective years in which the A/C systems in the various existing public markets in Hong Kong were installed and the number of years that the A/C units had been used (set out by market); whether the authorities have replaced the A/C systems in various public markets on a regular basis; if they have, of the service years set for those systems, and whether the A/C system in Shek Wu Hui*

*Market is due for replacement; if they have not replaced the A/C systems on a regular basis, of the reasons for that;*

- (c) as some stall operators have relayed that certain areas of Shek Wu Hui Market have all along been suffering from insufficient air flow, whether the authorities will formulate measures to improve the situation; if they will, of the details; if not, the reason for that;*
- (d) as it has been reported earlier that the "Indoor Air Quality Certification Scheme for Offices and Public Places" implemented by the Environmental Protection Department had found that a number of parameters of air quality objectives had exceeded the limits during the inspection conducted in a number of public libraries, whether the existing public markets in Hong Kong have participated in the certification scheme; if they have, of the results; if not, the reason for that; and*
- (e) whether the repair and maintenance of the A/C systems in the existing public markets in Hong Kong is undertaken by outsourced contractors or contractors; if it is, whether provisions are stipulated in the contracts to ensure that the indoor air quality (IAQ) of the markets meets the standards; if so, of the details; if not, the reason for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, Shek Wu Hui Market in Sheung Shui came into operation in 1994. Separate A/C systems were installed in the market and the cooked food centre, and the systems are maintained and repaired by the Electrical and Mechanical Services Department (EMSD). The market had its A/C system replaced in 2005. According to records, the A/C system of the market broke down in July and September last year, resulting in insufficient A/C supply. Upon urgent repair by the EMSD staff, the A/C supply resumed normal in two days. As regards the failure of the A/C system for the cooked food centre in May this year which led to insufficient A/C supply, the EMSD arranged for replacement of components immediately and the repair works were completed in mid-June. During the time when repair works were being carried out, the EMSD provided temporary mobile A/C facilities to help alleviate the problem of excessively high indoor temperature in the cooked food centre.

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

- (a) The number of failures of A/C systems in public markets which affected A/C supply in the past three years is given in the Annex.
- (b) The years in which the A/C systems in various public markets were installed are shown in the Annex. According to the EMSD, whether it is necessary to replace an A/C system or a piece of equipment generally depends on their operating conditions. The number of service years is just one of the factors taken into consideration. To ensure that the A/C systems in its public markets are in good working order, the Food and Environmental Hygiene Department (FEHD) has adopted various management measures, including regular cleansing and maintenance of A/C systems, and the installation of air purification system (for example, ultraviolet light, air scrubber, dehumidifying equipment, and so on). The FEHD will replace the facilities as and when required.
- (c) The FEHD will, in the light of the operating conditions of A/C systems and equipment and in response to the views of market tenants and members of the public, request the EMSD to submit proposals for improvement works as and when appropriate. As mentioned above, the A/C system of Shek Wu Hui Market broke down last year but resumed normal service after repair.
- (d) The IAQ standards set by the Environmental Protection Department are only applicable to offices and public places with a mechanical ventilation and air conditioning system, such as shopping malls, hotels and libraries. As the indoor environment of public markets is different from that of offices or other public places, the IAQ standards do not apply to public markets.
- (e) The repair and maintenance of all A/C systems in existing public markets in Hong Kong are undertaken by contractors of the EMSD. No provisions relating to air quality are included in the contracts concerned. As has been mentioned in part (b) of this reply, the FEHD conducts regular cleansing and maintenance of the A/C systems and has installed air purification systems to ensure that the A/C systems in its public markets are in good working order.



## Annex

District	Name	Market	Cooked food centre	Cooked food market	Year of installation of A/C system	Number of failures of A/C system which affected A/C supply		
		A/C	A/C	A/C		2010	2011	2012
Central and Western	Centre Street Market cum Cooked Food Centre	✓	✓		2002	0	0	0
	Sheung Wan Market cum Cooked Food Centre		✓		1998	0	0	0
	Smithfield Market cum Cooked Food Centre		✓		2002	0	0	3
	Queen Street Cooked Food Market			✓	2002	0	0	0
	Sai Ying Pun Market	✓			1999 <sup>Δ</sup>	0	0	0
Eastern	Java Road Market cum Cooked Food Centre		✓		1997 <sup>Δ</sup>	1	3	6
	Sai Wan Ho Market cum Cooked Food Centre		✓		1992	0	0	2
	Yue Wan Market cum Cooked Food Centre	✓	✓		2007	0	0	1
	Chai Wan Market cum Cooked Food Centre	✓	✓		2000	0	3	1
	Aldrich Bay Market cum Cooked Food Centre	✓	✓		2008	0	0	0
Islands	Peng Chau Market	✓			2001	0	0	0
Southern	Ap Lei Chau Market cum Cooked Food Centre	✓	✓		1998	0	0	0
Wan Chai	Bowrington Road Market cum Cooked Food Centre		✓		2004	2	2	4
	Lockhart Road Market cum Cooked Food Centre		✓		1998 <sup>Δ</sup>	0	0	1
	Wan Chai Market	✓			2008	3	4	4
	Wong Nai Chung Market cum Cooked Food Centre		✓		1999	3	2	2
Kowloon City	Hung Hom Market cum Cooked Food Centre		✓		1996	0	1	4
	To Kwa Wan Market cum Cooked Food Centre		✓		1993	0	0	0

District	Name	Market	Cooked food centre	Cooked food market	Year of installation of A/C system	Number of failures of A/C system which affected A/C supply		
		A/C	A/C	A/C		2010	2011	2012
Mong Kok	Mong Kok Cooked Food Market			✓	2005	0	0	0
	Tai Kok Tsui Market cum Cooked Food Centre	✓	✓		2005	0	0	0
Kwun Tong	Yee On Street Market	✓			1999	0	0	2
	Lei Yue Mun Market	✓			2000	0	0	1
Sham Shui Po	Pei Ho Street Market cum Cooked Food Centre		✓		1995	0	0	0
Wong Tai Sin	Tai Shing Street Market cum Cooked Food Centre		✓		1998	0	0	0
Kwai Tsing	Tsing Yi Market	✓			1999	0	0	0
North	Luen Wo Hui Market cum Cooked Food Centre	✓	✓		2002	0	0	0
	Shek Wu Hui Market cum Cooked Food Centre	✓	✓		1994*	0	0	2
Sha Tin	Sha Tin Market	✓			1999 <sup>Δ</sup>	0	0	1
Tai Po	Tai Po Hui Market cum Cooked Food Centre	✓	✓		2004	1	0	0
Tuen Mun	San Hui Market	✓			2007	0	0	0
	Yan Oi Market	✓			2000 <sup>#</sup>	0	0	0
Yuen Long	Tai Kiu Market	✓			2000 <sup>Δ</sup>	0	0	2
Total						10 <sup>Δ</sup>	15 <sup>Δ</sup>	36 <sup>Δ</sup>

Notes:

<sup>Δ</sup> Improvement works for A/C systems in Sai Ying Pun Market, Java Road Market cum Cooked Food Centre, Lockhart Road Market cum Cooked Food Centre, Sha Tin Market, and Tai Kiu Market are planned for 2013-2014

\* A/C system replaced in 2005

# A/C system replaced in 2011

## Mechanism for Renunciation of Hong Kong Permanent Resident Status

12. **MR JEFFREY LAM** (in Chinese): *President, up to the present, more than 200 000 children have been born in Hong Kong to Mainland women whose spouses are not Hong Kong permanent residents (commonly known as "doubly non-permanent resident (DNR) children"). It has been reported that under the*

*household registration system of the Mainland, DNR children do not have registered residence on the Mainland because of their Hong Kong permanent resident status (Hong Kong resident status). As a result, they will not be admitted by public schools on the Mainland, may not sit for admission examinations for higher education on the Mainland, and are not entitled to the medical and other benefits provided by the Mainland Government. In this connection, will the Government inform this Council:*

- (a) of the number of enquiries on or applications for renunciation of Hong Kong resident status received by the Government in the past five years; among such cases, the number of those in which such status had been renounced or lost, and the number of DNR children involved in such cases;*
- (b) whether any mechanism is currently in place for Hong Kong residents to apply for renunciation of such status; if so, of its legal basis; if not, the reasons for that; whether the Government will, by means of legislative amendments, establish a mechanism for parents of DNR children to apply on behalf of these children for renunciation of the Hong Kong resident status; and*
- (c) of the ways by which DNR children can renounce their Hong Kong resident status and obtain registered residence on the Mainland at present; whether the Government will discuss with the Mainland authorities the establishment of a mechanism for DNR children to obtain registered residence on the Mainland, so as to ameliorate the problem of shortage of primary and secondary school places caused by DNR children coming to Hong Kong for education?*

**SECRETARY FOR SECURITY** (in Chinese): President, my reply to the three parts of the question is as follows:

Pursuant to paragraph 2 of Schedule 1 to the Immigration Ordinance (Cap. 115), a permanent resident of the Hong Kong Special Administrative Region is:

- (a) a Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;

- (b) a Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than 7 years before or after the establishment of the Hong Kong Special Administrative Region;
- (c) a person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b);
- (d) a person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (e) a person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the Hong Kong Special Administrative Region in category (d) before or after the establishment of the Hong Kong Special Administrative Region if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode in Hong Kong;
- (f) a person other than those residents in categories (a) to (e), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

The Immigration Department (ImmD) verifies Hong Kong resident status in accordance with the Immigration Ordinance. According to the law, once verified, as long as the person still qualifies for Hong Kong permanent resident, the Hong Kong resident status will not change. The ImmD does not maintain figures of enquiries on giving up Hong Kong resident status.

Household registration in the Mainland falls within the remit of the Mainland authorities and should be handled in accordance with the law of the Mainland.

Mainland women should carefully consider the situation before deciding to give birth in Hong Kong.

## Occupy Central Movement

13. **DR PRISCILLA LEUNG** (in Chinese): *President, recently, some members of the community have initiated the Occupy Central movement, and they hope that at least 10 000 people will participate in the movement. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed, when 10 000 people occupy the main roads in Central, how the traffic, public space and daily commercial activities in Central might be affected, the number of police officers needed to maintain order at the scene, the impact on the routine policing duties, and the additional public expenditure to be incurred; if it has conducted such an assessment, of the outcome; if not, the reasons for that;*
- (b) *whether the police and the relevant government departments have formulated contingency plans to ensure that the traffic on the main roads and the economic activities in the core commercial areas in Central will not be paralysed should the main roads in Central be occupied; if they have, of the contents of such plans; if not, the reasons for that; and*
- (c) *whether it has assessed, under the existing legislation, the criminal liabilities to be borne by the persons initiating and participating in the action of occupying the main roads in Central, as well as the penalties for the relevant offences?*

**SECRETARY FOR SECURITY** (in Chinese): *President, Hong Kong residents enjoy the rights of assembly, procession and demonstration according to the Basic Law and other relevant laws. The police always handle public meetings, processions and demonstration in a fair, just and impartial manner in accordance with the laws of Hong Kong. The enforcement policy of the police is to endeavour to strike a balance by facilitating all lawful and peaceful public meetings, demonstrations and processions on the one hand, and on the other hand, reducing the impact of such activities on other members of the public or road users, and ensuring public order and public safety.*

My reply to Dr LEUNG's question is as follows:

(a) and (b)

The Administration is very concerned about the "Occupy Central" initiated by some members of the community. According to reports, some members of the community hope to rally over 10 000 people to occupy trunk roads in Central as a means to express their aspirations. We understand that there are concerns from quite a number of organizations and individuals over the impact of "Occupy Central" on the community, including disruption of social order, damage to the local economy and the business environment, undermining of Hong Kong's competitiveness and, consequently, withdrawal of business by the multinational corporations.

We have to reiterate that when expressing their views, participants of public meetings, demonstrations or processions should, under the premise of observing the laws of Hong Kong, conduct such activities in a peaceful and orderly manner. Participants of public processions and demonstrations should not engage in any behaviour to the detriment of public order or any act of violence. If there is any occupancy of trunk roads in Central, collectively paralysis of traffic, blocking up of public thoroughfares, and so on, by over 10 000 people, it will cause grave impact on social order and public safety and even affect the emergency services rendered to the public, thereby threatening lives and property of the public. The Hong Kong Police Force is a professional law-enforcement agency and has the duty to take decisive enforcement actions according to the law against any contravention of the law, breach of peace or public order and to restore social order and public safety. The police will, in the light of the prevailing circumstances, adopt appropriate measures to ensure public order and protect public safety.

Under the Public Order Ordinance (the 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, shall give a notice to the Commissioner of Police not less than seven days prior to the intended event, and it can only be conducted if the

Commissioner of Police does not prohibit or object to it. The notice shall cover such basic information as the date of the public meeting or procession, time of commencement and duration, location or route, subject matter, as well as the estimated number of participants, and so on. The Commissioner of Police may impose condition(s) on a notified public meeting or procession to ensure order of the event and overall public safety, and the corresponding condition(s) imposed will be stated explicitly in the "letter of no objection" issued to the organizers. Organizers may appeal to the statutory and independent Appeal Board on Public Meetings and Processions (the Appeal Board) if they consider the Commissioner of Police's decision unreasonable. Chaired by a retired Judge, the Appeal Board, consisting of three other members selected in rotation from a panel of 15 members, can be convened at short notice upon receipt of an appeal application. The Court of Final Appeal pointed out in a judgment that Hong Kong's statutory requirement for notification is widespread in jurisdictions around the world. It also affirmed that such statutory requirement for notification is constitutional, and is required to enable the police to fulfil their duties by taking reasonable and appropriate measures, thereby facilitating lawful assemblies and demonstrations to take place in a peaceful manner.

The police appeal to any person planning to organize public order events with the number of attendance exceeding the limit prescribed in the Ordinance should approach the police as early as possible for discussion of the specific arrangements so that corresponding measures can be formulated and adopted, whereby facilitating the concerned activities to be conducted in a peaceful manner, minimizing the impact on other members of the community and ensuring public order and public safety.

The extent of resources to be deployed by the police in handling individual public order events depends upon the nature of the events, the number of participants, locations and actual circumstances on the spot. Based on the past experiences, the police would require substantial manpower and resources when handling large-scale public order events including public processions and demonstrations, to ensure public order and public safety.

- (c) In relation to the criminal liabilities that the participants of "Occupy Central" may face, the Administration will not comment on any hypothetical scenarios. However, when expressing their views, participants of public meetings, demonstrations or processions should, under the premise of observing the laws of Hong Kong, conduct themselves in a peaceful and orderly manner. Participants of processions and demonstrations should not engage in any behaviour to the detriment of public order or any act of violence.

### **Conditions of Housing Estates and Courts Under Hong Kong Housing Society**

14. **MR WONG KWOK-HING** (in Chinese): *President, there are currently 20 rental housing estates under the Hong Kong Housing Society (HKHS) and 10 Flat-For-Sale Schemes (sold housing courts) launched by it, providing over 100 000 grass-roots and low-income members of the public with the options of renting and purchasing flats. However, some members of the public have pointed out that as the buildings in a number of housing estates/courts are over 50 years old, their appearance and interior have become old and dilapidated. Improvement to the living environment of the residents will indeed rely on the HKHS carrying out repair works for and redeveloping such housing estates/courts. In this connection, will the Government inform this Council if it knows:*

- (a) *the respective dates of large-scale inspections on the building conditions and repair works carried out by the HKHS in the past five years for its various rental housing estates and sold housing courts whose maintenance periods have not yet expired, as well as the types of works and the costs involved (set out in table form); of the numbers of various kinds of complaints received from the residents during the same period and how they had been followed up;*
- (b) *according to the results of the proactive inspections conducted by the HKHS in the past five years, (i) whether the sold housing courts mentioned in part (a) were found to have problems similar to those found in Healthy Village Redevelopment Phase II, for example, debonded mosaic tiles falling off the exterior of the buildings and in*



- their lift lobbies one after another; (ii) whether the rental housing estates under the HKHS were found to have structural problems similar to those found in Wah Fu Estate under the Hong Kong Housing Authority, for example, serious problems of concrete spalling and exposed bar tendons, and so on, in the building interior, so that major structural overhauls of their exterior walls and interior are needed; if so, of a list of the housing estates/courts involved and the building conditions identified, as well as the number of proactive inspections conducted by HKHS staff in each of the past five years;*
- (c) *as some residents of the rental housing estates have relayed that the living environment of the housing estates which have been built for nearly 50 years, including Yue Kwong Chuen and Healthy Village Phase III, is so appalled that they have requested the HKHS to redevelop such estates and assist them in moving to other estates, whether the HKHS has any plan to redevelop these aged estates; if it has, of the timetable for redeveloping the housing estates and rehousing the residents; if not, whether it will commence within the coming five years a study on the redevelopment of such housing estates; if it will, of the detailed timetable;*
- (d) *as some minority flat owners have expressed strong dissatisfaction at the arrangement for the repair and maintenance of buildings in sold housing courts, for example, the strong reproach from the flat owners in Healthy Village Redevelopment Phase II on HKHS for dragging on the repair works for the mosaic tiles on the external walls of buildings and shirking its responsibility after the maintenance periods have expired, of the respective lists of sold housing courts whose maintenance periods have expired and those whose maintenance periods have not yet expired at present; of the sold housing courts for which the HKHS has conducted repair works in the past 10 years, as well as the works and the costs involved; and*
- (e) *given that the flat owners of sold housing estates are generally low-income people or retirees, of the types of assistance provided by the HKHS to help minority flat owners who are old and in financial difficulty cope with the economic pressure arising from paying for the repair and maintenance expenses when repair works need to be*

*conducted in housing courts whose maintenance periods have expired; whether the HKHS has any plan at present to enhance and extend the maintenance period of sold housing courts so as to assist flat owners who are grass-roots or low-income people?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, we have consulted the HKHS on the question raised by Mr WONG Kwok-hing. The responses provided by the HKHS are as follows:

- (a) The HKHS is responsible for the maintenance of its 20 subsidized rental estates which comprise 33 000 rental units. A comprehensive inspection will be conducted for every rental estate on an annual basis to identify major maintenance and improvement works required, and the works will be carried out in stages. In the past five years, the works carried out in the estates include: repair and renovation of external wall, re-roofing and waterproofing works, plumbing and drainage works, provision of barrier-free access (BFA), estate road repaving, improvement of fire services system, electricity upgrading, installation of new lifts and slope maintenance, and so on. A total of about \$830 million has been spent on these works. Details are set out at Annex A.

As far as the Flat-for-sale Scheme (FFSS) is concerned, the relevant properties have already been sold to individual owners. As the property manager, the HKHS has to discuss with the Owners' Committees or the Owners' Corporations in formulating maintenance and improvement works of larger scale. The situation of the estates vary from one to another. Generally speaking, during the estate's defects liability period (DLP), the HKHS will liaise with the contractor to follow up with any maintenance issue. The HKHS has had no new subsidized project completed for sale over the past five years.

In the past 10 years, various types of daily repair and maintenance works have taken place in the subsidized sales projects under FFSS, including pump replacement, replacement of paving blocks, lift modernization, replacement of water supply pipes and improvement

of lighting fittings, and so on. There have been three major maintenance works, which were carried out in Clague Garden Estate, Healthy Village Redevelopment Phase I and Healthy Village Redevelopment II respectively. The costs were borne by the flat owners. Details of these major works are at Annex B. All along, the HKHS has been in close touch with flat owners. The HKHS has not recorded the number of comments/complaints received.

- (b) The HKHS has been closely monitoring the conditions of its rental estates. There are no structural problems similar to those mentioned in the question in the HKHS rental estates. For FFSS projects, the HKHS has been in close touch with flat owners. Details of the major maintenance works carried out in the past 10 years have been provided in Annex B.
- (c) There are 20 rental estates under the HKHS, some of which were completed as early as in the 1960s. In order to enhance the living environment, improve the tenants' living quality, to make more effective use of land resources and increase the number of rental units, the HKHS will, in addition to refurbishment and maintenance of the estate facilities, consider redeveloping some of the estates. An example is the redevelopment of Ming Wah Dai Ha in Shau Kei Wan.

The HKHS reviews the redevelopment priority of its rental estates and the future redevelopment plan from time to time. The HKHS will take into account the decantation arrangement for tenants, the conditions of the estates and their facilities, resource implications on the HKHS, feasibility of the redevelopment, and so on, in carrying out the review. The HKHS will announce the redevelopment project to be carried out in a timely manner when the redevelopment plan is finalized.

- (d) As far as the maintenance of projects under the FFSS is concerned, the HKHS will fulfil its maintenance responsibility in accordance with the DLP as stipulated in the relevant agreements for sale and purchase. For reported defects within the DLP, the HKHS will refer them to the contractors for follow up. After the expiry of the

DLP, the owners will have to be responsible for fixing the building defects. Such a practice is in fact the same as any other private developments. The DLP of all FFSS estates have expired as at today.

Regarding the case of Healthy Village Redevelopment (Phase II), the estate has been completed for over 15 years and the DLP concerned expired in September 1998. Following the reports on the conditions of the external wall received from the residents, the HKHS immediately requested the project consultant to produce a report, and was advised that the scattered de-bonded wall tiles was due to time and external factors which was regarded as a normal occurrence in view of the age of the buildings. That said, the HKHS had proposed to the owners to jointly appoint an independent professional consultant to carry out investigation and assessment on the incident, so as to determine the conditions of the external wall tiles and the responsibility to repair. Subject to the investigation and assessment being agreeable to both parties, the HKHS would, in accordance with the consultant's report, take follow-up action if so required.

The major maintenance works carried out in the past 10 years in respect of FFSS projects as well as the expenses incurred have been listed out in Annex B.

- (e) The HKHS will be responsible for maintaining the development during the DLP as stipulated in the agreements for sale and purchase. After the expiry of DLP, the owners will be responsible for the maintenance. Those who are in need of assistance may participate in the Integrated Building Maintenance Assistance Scheme (IBMAS) jointly implemented by the HKHS and the Urban Renewal Authority since April 2011. Under IBMAS, the "Common Area Repair Works Subsidy/Interest-free Loan", "Home Renovation Interest-free Loan" and "Building Maintenance Grant Scheme for Elderly Owners" (government funded and administrated by the HKHS) may provide financial assistance (including subsidy/loan) to eligible property owners for building maintenance works in respect of common areas or individual units.

## Annex A

Major maintenance works in respect of the HKHS's rental estates  
in the past five years (2008-2009 to 2012-2013)

<i>Works Categories</i>	<i>Expenditure (in \$'000)</i>					<i>Total</i>
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>	<i>2011-2012</i>	<i>2012-2013</i>	
Redecoration/External Wall Repairs	27,139	18,700	24,176	5,460	11,302	86,777
Re-roofing and Waterproofing Works	3,943	8,135	16,861	264	1,150	30,353
Plumbing and Drainage Repairs	8,726	2,433	6,458	4,229	1,983	23,829
Miscellaneous Building Works (including BFA, repaving, vacant flat refurbishment, and so on)	19,799	21,545	27,006	38,655	20,112	127,117
MVAC Systems	-	1,159	310	2,698	17,446	21,613
Fire Services Installations	1,405	158	155	3,884	9,969	15,571
Electrical Installations	10,089	144,401	202,092	47,320	3,299	407,201
CABD/CCTV Systems	1,930	1,364	680	667	260	4,901
Lift Systems	2,157	10,633	3,702	49,583	19,846	85,921
Slope Maintenance	6,695	2,384	1,695	1,937	1,763	14,474
Pump Systems	5,152	3,190	1,831	2,613	725	13,511
<b>Total</b>	<b>87,035</b>	<b>214,102</b>	<b>284,966</b>	<b>157,310</b>	<b>87,854</b>	<b>831,267</b>

## Annex B

Major maintenance/improvement works in respect of subsidized sale projects  
under the FFSS in the past 10 years  
(2003-2004 to 2012-2013)

<i>Year</i>	<i>Estate</i>	<i>Works</i>	<i>Cost</i>	<i>Completion date</i>
2010-2011	Healthy Village Redevelopment Phase II	Consultancy services for residential blocks external wall repair	\$380,000	in progress
2009-2010	Clague Garden Estate	External wall repair at Towers A and B	\$4,736,200	December 2009
2009-2010	Healthy Village Redevelopment Phase I	Replacement of internal wall tiles	\$1,940,900	November 2010

**Market Reforms of Interest Rates and Exchange Rates of Renminbi**

15. **MR NG LEUNG-SING** (in Chinese): *President, the Chief Executive has indicated in the 2013 Policy Address that "Hong Kong is an ideal 'testing ground' for steady market reforms of our country's interest rate and exchange rate regimes, and its gradual realization of the RMB [Renminbi] capital account convertibility". The executive meeting of the State Council held in May this year had reportedly studied the preparation for the key tasks of deepening economic reform in this year, including steadily implementing reform measures for interest rate and exchange rate marketization, as well as putting forward operation proposals on the RMB capital account convertibility. In addition, a member of the Monetary Policy Committee of the People's Bank of China forecast, in a research report on finance published in May this year, that the liberalization of the Mainland's capital accounts would be completed between 2015 and 2020. In this connection, will the Government inform this Council:*

- (a) *of the progress of implementing the development direction of making Hong Kong a "testing ground" for the RMB capital account convertibility as mentioned in the Policy Address; and*
- (b) *whether it has studied in what aspects that the Government and the local finance industry can make complementary efforts to tie in with the liberalization of the Mainland's capital accounts?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): *President, the National 12th Five-Year Plan specifically states our country's support for Hong Kong's development as an offshore Renminbi (RMB) business centre and an international asset management centre. Under "one country, two systems", Hong Kong is an ideal "testing ground" for steady market reforms of our country's interest rate and exchange rate regimes, and its gradual realization of the RMB capital account convertibility.*

The SAR Government has been promoting the development of offshore RMB business since 2004. Along with the greater use of RMB in cross-border trade and the support from the Central Government and related Mainland authorities, the offshore RMB business in Hong Kong has grown rapidly in recent years, and has developed into the world's largest and most efficient offshore RMB business centre. In the first four months of 2013, RMB trade settlement

conducted through banks in Hong Kong exceeded RMB 1,100 billion yuan, representing a significant year-on-year increase of 48%.

Driven by RMB trade settlement, RMB deposits in Hong Kong have increased significantly and RMB financing activities have become more active. Hong Kong has the world's largest offshore pool of RMB funds. As at the end of April 2013, total RMB deposits and outstanding RMB certificates of deposits in Hong Kong amounted to RMB 837 billion yuan. As a world's offshore RMB financing centre, RMB bonds, loans and equity products in Hong Kong have developed well. On bonds, as at the end of May 2013, there were 276 RMB bond issuances with total outstanding amount reaching RMB 277.6 billion yuan. On loans business, as at the end of April 2013, the outstanding RMB loans amounted to RMB 88 billion yuan. On equities, the first offshore RMB-traded share was listed in Hong Kong in October 2012 under the innovative "Dual Tranche, Dual Counter" model.

On 6 March 2013, Mainland regulators announced the revised rules for Renminbi Qualified Foreign Institutional Investors (RQFII) pilot scheme. Under the revised rules, the types of institutions eligible for applying for RQFII have been enlarged to cover Hong Kong subsidiaries of Mainland commercial banks and insurance companies, and financial institutions which are registered and have major operations in Hong Kong. The investment restriction of RQFII funds has also been relaxed to allow institutions to design the types of products in accordance with market conditions. This will be conducive to the launch of more innovative and diversified RMB investment products in Hong Kong, and enhance the cross-border use and circulation of RMB funds between the Mainland and Hong Kong. Hang Seng Investment Management Limited, a wholly-owned subsidiary of Hang Seng Bank, has recently been granted an RQFII qualification and become the first Hong Kong-funded company to join the RQFII list. It plans to launch an exchange-traded fund.

Along with the development of the offshore RMB business, the RMB financial intermediation activities in Hong Kong are becoming increasingly active. The price discovery and market mechanism are becoming mature. In this regard, the Treasury Markets Association of Hong Kong launched the CNH Hong Kong Interbank Offered Rate fixing (CNH HIBOR fixing) on 24 June 2013. As the offshore RMB market in Hong Kong grows, there is an increasing need for an offshore RMB interest rate benchmark for financial contracts to reference on. By providing a reliable benchmark for the pricing of loan

facilities, it will support the further growth of the offshore RMB loan market. The CNH HIBOR fixing will also spearhead the development of the offshore RMB interest rate swap market and assist market participants to hedge the interest rate risk of their RMB business.

As a global hub for offshore RMB business, Hong Kong is playing an increasingly important role in supporting international corporations and financial institutions in conducting offshore RMB business. As at the end of April 2013, 209 banks were participating in Hong Kong's RMB clearing platform, of which 185 were subsidiaries and branches of overseas banks and the overseas presence of Mainland banks. Over 1 500 correspondent banking accounts were maintained by overseas banks with branches in Hong Kong. The average daily turnover of Hong Kong's RMB Real Time Gross Settlement system reached RMB 390 billion yuan in May 2013, with about 90% of the transactions conducted in the offshore market.

Overall speaking, the RMB business platform in Hong Kong has matured, providing one-stop offshore RMB services to global corporations and financial institutions. It also plays an active role in the process of the modernization and multi-level development of the Mainland's financial system and gradual realization of the RMB capital account convertibility.

Looking ahead, the SAR Government and the industry will continue to promote the offshore RMB business in Hong Kong, in line with the pace of Mainland's liberalization of capital account and under controllable risks, to further enhance the connection between the offshore RMB market in Hong Kong and the onshore market in the Mainland.

Moreover, the SAR Government will continue to enhance the market infrastructure and consolidate the financial platform as well as maintain close communication with related Mainland authorities in order to facilitate the circulation of RMB funds between the onshore and offshore markets; promote the arrangements for expansion of RQFII; continue to strengthen the RMB business links with overseas markets (for example, London and Australia), with a view to enhancing our role and function as the global hub for offshore RMB business and as a wholesale platform serving the retail activities of international financial institutions; continue to conduct roadshows overseas, with an aim to assist and facilitate financial institutions and corporates around the world to expand their RMB business while promoting the use of Hong Kong's RMB financial platform,



either directly or indirectly, to settle their transactions. We hope the industry will continue to grasp the opportunities of RMB internationalization, facilitating the innovation and diversification of offshore RMB market so as to meet the needs of corporations, financial institutions and investors.

### **Supply of Offices in Hong Kong**

16. **MR ABRAHAM SHEK** (in Chinese): *President, a study report published recently by a property consultancy company points out that the office space shortfall in Hong Kong between 2013 and 2020 is anticipated to be as high as 4 million to 8 million sq ft, equivalent to the area of four to eight blocks of Two International Finance Centre. In addition, as indicated in the Hong Kong Property Review 2013 compiled by the Rating and Valuation Department, office rentals have been rising for four consecutive quarters, and the overall rental index for the fourth quarter of 2012 rose by 7% from that of the previous year. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have estimated the supply and demand of offices of various grades in Hong Kong in the coming decade; if they have, of the details; if not, the reasons for that;*
- (b) *of the respective additional areas of offices of various grades, calculated on the basis of the areas of the commercial sites in the statutory plans already made or under preparation by the authorities under the Town Planning Ordinance (Cap. 131), and the timetables for introducing them into the market; and*
- (c) *of the authorities' strategies to expedite the supply of offices of various grades to mitigate the rising trend of office rentals, thereby easing the operational pressure of small and medium enterprises as well as maintaining Hong Kong's status as a regional business hub?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): *President, to maintain Hong Kong's position as a leading financial and commercial centre, the Government will continue to adopt a multi-pronged approach to ensure a steady and adequate supply of quality office for supporting the continued economic growth of Hong Kong.*

My reply to the question raised by Mr Abraham SHEK is as follows:

- (a) The Hong Kong 2030: Planning Vision and Strategy (HK2030 Study) provides a long-term planning strategy on various types of land uses, including Grade A offices in Central Business District (CBD). According to the forecast of the HK2030 Study, CBD Grade A office space has to increase by 2.7 million sq m in gross floor area (GFA) from 2003 to 2030 in order to meet market requirements. There is no estimation of demand for offices of other grades in the next 10 years since such demand is more sensitive to market fluctuations.

It is difficult for the Government to make projections on future supply of offices in Hong Kong as office developments are essentially market-driven. That said, according to the information of the Rating and Valuation Department, the estimated completion of offices in Hong Kong for 2013 and 2014 will be around 157 800 sq m and 158 900 sq m<sup>(1)</sup> respectively.

- (b) On statutory plans prepared in accordance with the Town Planning Ordinance, "Commercial" zone covers various always permitted uses, and "office" use is only one of them. "Commercial" zone also covers private or Government land with existing developments, or various types of commercial uses currently under planning. Therefore, we cannot estimate the additional floor areas of different office grades and the timing of their market availability from the area of the "Commercial" zone designated on the relevant statutory plans.
- (c) As set out in the 2013 Policy Address, the Government will continue to adopt a multi-pronged approach to increase the supply of housing land, while at the same time supply more commercial land and facilities (including offices) to facilitate the further development of different economic activities in Hong Kong. The Administration is actively implementing a series of measures described in the following paragraphs with a view to increasing the supply of commercial land and facilities (including offices).

(1) The figures refer to "internal floor area".

First, the measures on energizing Kowloon East will help develop Kowloon East into another core business district of Hong Kong. According to the 2013 Policy Address, Kowloon East has the potential to supply an additional office floor area of about 4 million sq m. To expedite the process, we are considering relocating the existing government facilities in the two action areas of Kowloon East and making available some vacant and appropriate sites in the action areas to the market as soon as possible. It is expected that these two action areas will be able to provide about 500 000 sq m of floor area in total for office and other uses.

Besides, in the Kai Tak Development Area, 14 sites are zoned "Commercial" under the Kai Tak Outline Zoning Plan. Five of them are located at the Kai Tak city centre on the North Apron area, another three are in the corner of the South Apron area at the Kowloon Bay waterfront, and the remaining six are located in the Runway Area. These sites, with a total area of about 14 hectares, are reserved for commercial uses, including offices, shops, hotels, and so on. They will be made available to the market by phases after the relevant infrastructure works are progressively completed.

To tie in with the transformation of Kowloon East into a business district and meet the public expectation for increasing housing supply in urban areas, we are reviewing the land use planning in the Kai Tak Development Area, including exploring the scope for increasing office and housing supply in the North Apron area, the South Apron area and the former Runway Area, without compromising the planning vision and the land supply in the coming five years. The Government will conduct detailed technical studies to assess the impacts on the neighbouring areas from the environmental and traffic aspects, and so on. Public consultation will be carried out when the results of the studies are available.

Regarding the provision of floor space for commercial uses (including office use), the Government will continue to increase the supply of commercial/business sites through land sale. A total of nine commercial/business sites were sold by the Government in the last two years, providing about 400 000 sq m of GFA. The

2013-2014 Land Sale Programme offers a total of nine commercial/business sites, which are capable of providing about 330 000 sq m of GFA. We also expect that the long-term development plan for the future New Central Harbourfront will provide about 90 800 sq m of new floor space for office uses. The sites concerned will gradually be made available for development after the completion of the Central-Wanchai Bypass and the related works in 2016-2017. Furthermore, the "Government, Institution or Community" sites in the existing core business districts, including the Murray Road Car Park in Central and the Rumsey Street Car Park in Sheung Wan, and so on, will be converted to commercial uses. The Government will continue its proactive land sale approach to increase the supply of commercial/business sites.

Furthermore, the Government announced in October 2009 a set of measures to facilitate the redevelopment and wholesale conversion of old industrial buildings. These measures came into effect on 1 April 2010, aiming at providing more floor space for suitable uses to meet Hong Kong's changing social and economic needs. Up to the end of May this year, the Lands Department approved 70 applications under the measures, and the projects concerned have a capacity to provide a total GFA of about 700 000 sq m of converted or new floor space. Of the approved applications, more than half applied for change into "office" use, among other new uses.

Meanwhile, the current government accommodation policy is to relocate, if feasible, government offices which are not location bound out of high-value areas (including core business districts), and as far as possible make use of government-owned properties to reprovision government offices accommodated in leased premises. This will not only provide long-term office accommodation for the departments concerned, but will also reduce rental expenditure. The properties so released will in turn help increase the supply of commercial office space, thereby facilitating the development of different types of economic activities.

Recent initiatives in this connection include the sale of government-owned properties covering a portion of the 3rd floor and

the whole of the 4th, 5th and 6th floors of Citibank Tower, No. 3 Garden Road, Hong Kong (which was formerly used by the Legislative Council Secretariat as its office). The Government already signed the Sale and Purchase Agreement in May this year. Upon completion of the transaction, about 6 200 sq m of Grade A office space in Central will be available in the market for commercial uses.

Besides, similar initiatives of releasing office space by the Government in the next few years include:

- (i) Relocation of the Trade and Industry Department (TID): The Government is now carrying out the construction works for the Trade and Industry Tower at the Kai Tak Development Area, which is expected to be completed by end 2014. Upon relocation of TID to the new tower, more than 18 000 sq m of floor area in the Trade and Industry Department Tower in Mong Kok will be released for commercial uses. Meanwhile, among the 33 000 sq m in net operating floor area of the new tower, about half will be used for reprovisioning of government offices accommodated in leased premises mostly in South East Kowloon;
- (ii) Relocation of the Department of Justice (DoJ) to the former Central Government Offices (CGO): Upon relocation of DoJ to the former CGO by stages starting from 2015, its existing offices in the Queensway Government Offices (QGO) and leased premises will gradually be vacated. Offices vacated in QGO will mainly be used for reprovisioning of other government offices currently accommodated in leased premises in Central and Admiralty;
- (iii) Reprovisioning of the three government office buildings at the Wan Chai waterfront: The Government is now actively planning for the reprovisioning of the three government office buildings at the Wan Chai waterfront and gradually moving the affected departments to the new government office buildings in non-core business districts. After the

completion of the new government office buildings, we will arrange the departments to move out of the three government office buildings at the Wan Chai waterfront by stages such that the vacated floor area can be released as soon as possible for renting out, thereby increasing the supply of Grade A office space in Wan Chai. After the completion of the entire relocation plan, we will consider putting the three government office buildings on sale at an appropriate time. It is expected that 175 000 sq m of floor area will then be made available for commercial uses; and

- (iv) Construction of the West Kowloon Government Offices (WKGO): The proposed WKGO will provide a total net operating floor area of 50 000 sq m, of which about 30 000 sq m will be used for reprovisioning some of the offices of the Buildings Department, Civil Engineering and Development Department and Transport Department which are currently accommodated in leased premises in Wan Chai, Tsim Sha Tsui, Mong Kok and Kwun Tong. It will also provide office space for reprovisioning other departments in the three government office buildings at the Wan Chai waterfront.

In conclusion, the Government will continue to monitor closely the demand and supply situation of offices in Hong Kong and proactively pursue appropriate land use planning, relevant urban design, district enhancement works, and convenient transport networks. In doing so, we seek to develop more high quality new office clusters with a view to meeting the market demand and continuing to strengthen Hong Kong's competitiveness.

### **Rezoning 13 Sites in Green Belt Areas and Illegal Occupation/Fly-tipping in Green Belt Areas**

17. **MISS ALICE MAK** (in Chinese): *President, it has been reported that illegal occupation or fly-tipping (such as old tyres) occurred in a number of sites*



(Table 3)

		District													Annual total number					
		Central and Western District	Eastern District	Southern District	Wan Chai	Kowloon City	Kwan Tong	Sham Shui Po	Yau Tsim Mong	Wong Tai Sin	Islands	Kwai Tsing	North District	Sai Kung		Sha Tin	Tai Po	Tsuen Wan	Tuen Mun	Yuen Long
2010	Number of law enforcement actions																			
	Area of land involved																			
2011	Number of law enforcement actions																			
	Area of land involved																			
2012	Number of law enforcement actions																			
	Area of land involved																			

- (b) *of the five most common situations of illegal occupation of GB areas, as well as the number of such cases in which the persons concerned were convicted and the penalties imposed on them in the past three years;*
- (c) *whether the aforesaid 13 sites were involved in any illegal occupation/fly-tipping in the past three years; if so, of the site area involved; and*
- (d) *whether the Government will announce within this year the details of the development plans for rezoning the aforesaid 13 sites for residential use, including the site area and location, and so on, of each site; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, the 2013 Policy Address has put forward 10 measures to increase housing land supply in the short to medium-term, one of which is to rezone 13 devegetated, deserted or formed GB sites to residential use, as recommended in the Planning Department's (PlanD) Stage 1 GB Review. The relevant rezoning work is commencing



progressively. The Stage 2 GB Review is also underway with a view to identifying more sites with potential for residential development to meet the housing needs of the general public.

My reply to the question raised by Miss Alice MAK is as follows:

(a) and (b)

The LandsD is responsible for dealing with cases of unlawful occupation of Government land. Such work is undertaken by its 12 District Lands Offices (DLOs) according to their district demarcations instead of the zoning (for example, GB areas) on the statutory plans. Therefore, the LandsD does not maintain a statistical breakdown of its enforcement actions by land use zones. Generally speaking, common cases of unlawful occupation of Government land include erection of unauthorized structures on land, and occupation of land for unauthorized uses (such as garden or open storage area, and so on). The DLOs will patrol the black spots in their districts on a regular basis, and in response to complaints and case referrals, take appropriate follow-up actions accordingly, including removal of structures and articles on the occupied land. The LandsD will also seek legal advice and institute prosecution as appropriate. Over the past three years (that is, 2010, 2011 and 2012), the LandsD respectively handled 7 022, 6 909 and 8 154 clearance cases of unlawful occupation of Government land, and there were respectively five, two and 19 convictions for unlawful occupation of Government land under section 6(4) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28). In two of such convictions, the maximum fine of \$10,000 was imposed. Moreover, if any illegal waste dumping activity is spotted or reported, the Environmental Protection Department will take enforcement action under the Waste Disposal Ordinance (Cap. 354).

(c) As mentioned above, the LandsD does not maintain a statistical breakdown of its enforcement actions by land use zones. According to the information of the PlanD, the 13 GB sites recommended for rezoning in the Stage 1 GB Review were not

involved in any unauthorized development in contravention of the Town Planning Ordinance (Cap. 131) in the past three years.

- (d) In the PlanD's Stage 1 GB Review, 13 GB sites which are devegetated, deserted or formed are recommended for rezoning for residential use. These sites, located in Tai Po, Sha Tin, Tuen Mun, Yuen Long and Sai Kung districts, have a total area of about 57 hectares and are estimated to provide about 23 000 flats.

The PlanD has progressively commenced the rezoning work for these GB sites. Rezoning of one of the sites located at the junction of Clear Water Bay Road and Pik Sha Road for residential use has already been gazetted on 10 May 2013. As for the remaining 12 sites, it is estimated that the rezoning procedures for nine of them will be completed by late 2014, and the rezoning of the other three sites will be completed as soon as possible afterwards. Since some of the sites require further studies or technical assessments, the details of the sites will be released upon commencement of their rezoning procedures. According to the established practice, the public will be invited to submit their representations and comments during the statutory exhibition period under the statutory planning procedures, and the PlanD will consult the relevant District Councils on the rezoning proposals for individual sites.

### **Proposed Extension of Landfills**

18. **MR JAMES TIEN** (in Chinese): *President, regarding the projects recently proposed by the Government for extending the Southeast New Territories Landfill (Tseung Kwan O Landfill) and the Northeast New Territories Landfill, many residents in Tseung Kwan O and the North District have conveyed to me their strong discontent and opposition. They are concerned that problems of odours, air pollution, environmental hygiene, dust and transport, and so on, caused by the existing landfills to the surrounding areas will worsen with the extension, resulting in further harm to the health and living environment of the residents nearby. In this connection, will the Government inform this Council:*

- (a) *notwithstanding the authorities have indicated that the District Councils (DCs) concerned have been consulted on the aforesaid two projects and such DCs have expressed support or no-objection to them, whether the authorities have gauged the views of the residents in the districts concerned in detail; if they have, of such views; if not, the reasons for that;*
- (b) *of the formula adopted by the authorities for arriving at the exhaustion year of the Tseung Kwan O Landfill, and why the authorities have presented several variants of exhaustion year over the past years;*
- (c) *as the Tseung Kwan O Landfill is the landfill closest to residential areas and its extension project is expected to cause greater impacts on the residents nearby, whether the authorities have explored alternative measures in place of the extension project and worked for an early closure of the landfill; if they have, of the details; if not, the reasons for that; and*
- (d) *as some residents and experts have indicated that the odours produced by the Tseung Kwan O Landfill may drift to areas on the Hong Kong Island such as Taikoo Shing and Siu Sai Wan, whether the authorities have conducted an in-depth investigation on the issue; if they have, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President, our reply to Mr TIEN's question is as follows:

- (a) We have adopted a continuous public involvement approach during the planning and development stages of the projects, including the statutory environmental impact assessment (EIA) process. We have conducted a series of public consultation/engagement sessions through which we considered and addressed the concerns of relevant stakeholders and other interested parties on the landfill extension projects.

For the Northeast New Territories (NENT) Landfill Extension, we have been consulting the North District Council (NDC) since 2004 on the proposal to conduct engineering feasibility and EIA study for the project, and from time to time reported to NDC on the study progress. We consulted NDC on 12 April 2007 regarding the EIA findings and the latest development of the project. A motion objecting to the NENT Landfill Extension was moved by the NDC at the meeting.

As the proposed NENT Landfill Extension site is located between Ta Kwu Ling and Sha Tau Kok, the Ta Kwu Ling District Rural Committee (TKLDRC) and the Sha Tau Kok District Rural Committee (STKDRC) are also key stakeholders and local objections to the project had been received from them. In response to local concerns, the North District Office and the Environmental Protection Department (EPD) have taken the lead to set up a Working Group with representatives from the TKLDRC and STKDRC in early 2009. The Working Group provides a forum for stakeholders to express their views and to map out measures and betterment programmes to address their concerns. Liaison meetings under this Working Group had been held regularly to brief and update stakeholders of the latest development of the landfill extension project. Ten meetings have been held so far, with most of the requests under the betterment programmes in Ta Kwu Ling and Sha Tau Kok (mainly concerning improvement to local environment like greening or community facilities) successfully met or being explored. We will continue to carry out enhancement and associated works, and consider actively the requests for implementation of local enhancement works.

Subsequently, in a consultation with the NDC on 9 June 2011 regarding Hong Kong's latest waste management strategy and the action plan, including the implementation of the NENT Landfill Extension project, the NDC members were generally supportive of the waste management strategy, without any motion against the NENT Landfill Extension. We will continue to maintain close liaison with the NDC, local community and other relevant stakeholders in taking forward the project.

As regards the Southeast New Territories (SENT) Landfill Extension, we have adopted a continuous public involvement approach with the statutory bodies, non-statutory organizations and local representatives since the inception of the project in 2004. We have consulted the Sai Kung District Council (SKDC), the Advisory Council on the Environment, green groups, professional bodies and institutions, education institutions and the Tseung Kwan O community. In addition, we have organized altogether over 500 site visits (with some 15 000 participants) to SENT Landfill, roving exhibitions and road shows in Tseung Kwan O and arranged outreach programmes for schools and residents in Tseung Kwan O to introduce the SENT Landfill Extension project to the local community.

Among the three landfills, SENT Landfill is the closest to major residential developments, thus called for extra efforts in addressing community concerns on air quality, odour and dust. On odour concerns, we will designate the proposed SENT Landfill Extension for the reception of only construction waste with no odour issue. Municipal solid waste will no longer be accepted upon the designation, resulting in reduction of relevant vehicle count by half when only construction waste is received. In addition, from mid-2013, an on-site odour monitoring team will operate from 6 am to 2 am every day to enhance monitoring on and provide swift response to the odour issue. To step up monitoring on air quality, we will measure PM<sub>2.5</sub> at Wan Po Road from July 2013 onwards, and establish an air quality monitoring station in Tseung Kwan O. For addressing concerns on dust, frequent cleansing of Wan Po Road has been arranged.

We last consulted SKDC on 3 May 2011 on the project. The meeting concluded that most SKDC Members present at that meeting supported or had no objection to the scheme under which the size of the landfill extension will be reduced and only construction waste will be received and thereby addressed the community's concern on odour problem. We will continue to maintain close liaison with SKDC and other relevant stakeholders in taking forward the extension project. We will also continue to

carry out enhancement and associated works, and consider actively the requests for implementation of local improvement works.

- (b) The estimated date for the landfills reaching their full capacity depends on the waste generation rate, waste recovery rate and amount of waste requiring disposal. The waste generation rate is affected by a host of factors, and individual parameters may fluctuate due to various reasons. In our estimation, we have taken into account the historical trend of various data and economic forecasts, such as the Census and Statistics Department's estimates of population growth, the Economic Analysis and Business Facilitation Unit's estimates of Gross Domestic Product growth, as well as the measures for waste recovery and recycling (for example, coverage of the EPD's waste separation measures). We have reviewed the estimated date for the landfills reaching their full capacity based on the above basic considerations. Based on our latest estimate, the SENT Landfill will be full by 2014-2015.
- (c) In May this year, the Environment Bureau published the "Hong Kong: Blueprint for Sustainable Use of Resources 2013-2022" (the "Blueprint") as a solution to our imminent waste management problem facing Hong Kong. The Blueprint adopts the theme of "Use Less, Waste Less" and covers a series of measures, which include various initiatives in tandem to avoid and reduce waste; to engage the community in waste reduction and to complete waste-related infrastructure.

Overseas experiences (including those of South Korea and of cities such as Taipei) show that landfills are an essential part of the waste management chain. Even in South Korea, the waste management composition presently stands at a ratio of 6:2:2, that is, recycling (60%), landfills (20%) and incineration (20%). As the three landfills will reach their full capacity successively in 2015, 2017 and 2019, the timely extension of the three strategic landfills is an integral part of the Blueprint.

Located in Tseung Kwan O, North District and Tuen Mun, the three strategic landfills receive waste from nearby districts and their

respective refuse transfer stations. The three landfills and seven refuse transfer stations build a balanced waste management network which has provided the most efficient and least polluting waste management service to the public.

Land resources are very valuable in Hong Kong, and land suitable for landfill purpose is scarce. Our proposed extension of the three strategic landfills is the outcome after thorough study. We hope to retain all precious usable landfill capacity. The SENT Landfill Extension in Tseung Kwan O is strategically important due to its proximity to Kowloon and Hong Kong Island and its ability to handle waste generated from the urban area.

Because of the judicial review, we have yet to take forward the large scale waste-to-energy modern incineration facilities. Their construction will take as long as eight years, thus unable to ease the pressure of final disposal in time. Therefore, apart from extending the landfills in time, we have no other means to dispose of such waste.

- (d) The EPD has received odour complaints from the residents of the Eastern District (including Siu Sai Wan and Heng Fa Chuen) on Hong Kong Island. After receiving the complaints, EPD staff attended the vicinity of the complainants' places of residence for investigation but could not observe the odour. Therefore, they were unable to further track down the nature and source of the odour. Apart from site investigation, the EPD also carried out analysis on the basis of the dates and time when residents were affected by the odour, as well as the data on wind speed and wind direction provided by the Hong Kong Observatory. However, the EPD could not verify if the odour had originated from the SENT Landfill.

### **Law-enforcement Actions Against Money Laundering Activities**

19. **MR SIN CHUNG-KAI** (in Chinese): *President, under the Drug Trafficking (Recovery of Proceeds) Ordinance (DTROPO) (Cap. 405) and the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455), a person commits*

*an offence if, knowing or having reasonable grounds to believe that any property (including money) is proceeds of an offence, he deals with that property (commonly known as "money laundering"). In this connection, will the Government inform this Council:*

- (a) of the number and average duration of the Mareva Injunctions issued by the Court in the past five years in relation to money laundering offences, as well as the amount of money involved;*
- (b) of the number of cases in which the persons concerned sought judicial review of the Mareva Injunctions, the number of successful cases among such cases, and the number of cases in which persons whose assets had been frozen were prosecuted for money laundering offences by the authorities, in the past five years; and*
- (c) of the number of criminal cases involving cross-boundary money laundering activities detected by the authorities in the past five years, and how the Government dealt with such criminal cases?*

**SECRETARY FOR SECURITY** (in Chinese): President, according to section 25 of both the DTROPO and the OSCO, a person commits an offence, if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence (including drug trafficking), he deals with that property. Besides, section 10 of Cap. 405 and section 15 of Cap. 455 stipulate that the Court of First Instance may, by a restraint order, prohibit any person from dealing with any realizable property, subject to such conditions and exceptions as may be specified in the order.

In consultation with the Financial Services and the Treasury Bureau and relevant departments, the reply to the question is as follows:

- (a) In the past five years, the Court of First Instance had made a total of 115 restraint orders pursuant to section 10 of DTROPO (Cap. 405) and section 15 of OSCO (Cap. 455), involving some HK\$5.4 billion. The duration of restraint orders generally lasts from several months to years, depending on the circumstances of individual cases.



- (b) There has been no judicial review regarding restraint orders in the past five years. Nevertheless, there were two successful attempts of discharge applications. The respondents of the 115 aforementioned restraint orders have either been charged or prosecuted.
- (c) Hong Kong has been an active participant in global efforts to combat money laundering and has put in place a robust anti-money laundering (AML) regime in line with the relevant international standards through legislation, law enforcement, regulation of the financial sectors, issuance of guidelines, publicity and education, and international co-operation. The regime has been functioning well and is positively recognized by overseas counterparts, international organizations and the relevant international AML standard setting bodies, including the Financial Action Task Force. The Administration has not maintained separate record on the number of criminal cases involving cross-boundary money laundering activities.

The Administration and law-enforcement agencies will maintain close liaison and exchange information with relevant international organizations and counterparts outside Hong Kong. We will also keep under review the effectiveness of existing measures and sustain our efforts in combating money laundering activities on all fronts.

### **Working Holiday Scheme**

20. **MR CHAN KIN-POR** (in Chinese): *President, Hong Kong has implemented the Working Holiday Scheme (the Scheme) with New Zealand and Australia since 2001 so that bilateral cultural ties as well as tourism promotion and development can be enhanced. Under the Scheme, Hong Kong young people aged between 18 and 30 may visit these countries for holiday and take up short-term employment during their 12-month stay, so as to acquire a better understanding of the cultural and social developments of the host countries, and gain valuable experiences while holidaying and working abroad, thereby strengthening their self-confidence, resilience and inter-personal skills. The Scheme has subsequently been extended to Ireland, Germany, Japan, Canada and South Korea. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of Hong Kong young people who had applied for and been granted approval to participate in the Scheme from 2009 to 2012 (set out in the table below);*

Year	Germany		Ireland		Japan		South Korea		Canada		New Zealand		Australia	
	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved
2009														
2010														
2011														
2012														

- (b) *of the total number of requests for assistance received by the authorities since the launch of the Scheme from Hong Kong young people while participating in the Scheme, the contents of such requests and the details of the responses made by the authorities;*
- (c) *given that travel insurance in general is valid for six months only and does not cover work injuries and accidents, whether the authorities have reminded participants of the Scheme to take out suitable insurance policies; and*
- (d) *whether it has reviewed the details of the Scheme regularly, requested the Chinese embassies/consulates in the places covered by the Scheme to enhance their assistance to participants of the Scheme, and stepped up publicity to raise participants' safety awareness; if it has, of the details; if not, the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, our response to the question raised by Mr CHAN Kin-por is as follows:

- (a) According to information provided by the host countries, the numbers of Hong Kong young people who had applied for and been

granted visas under their respective working holiday schemes with Hong Kong are set out below:

Year	Germany		Ireland		Japan		South Korea		Canada		New Zealand		Australia	
	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved	Number of applications received	Number of applications approved
2009	130 <sup>^</sup>	112 <sup>^</sup>	100	100	/	/	/	/	/	/	207*	202*	x	3 252
2010	132 <sup>^</sup>	126 <sup>^</sup>	100	100	658	265	/	/	187	173	425*	399*	x	3 806
2011	148 <sup>^</sup>	145 <sup>^</sup>	100	100	299	266	x	65	208	189	429*	400*	x	5 609
2012	150 <sup>^</sup>	142 <sup>^</sup>	100	100	422	270	x	108	221	198	474*	404*	x	9 354

Notes:

<sup>^</sup> Statistics from July of the year to June of the following year

\* Statistics from April of the year to March of the following year

/ Scheme not yet started

x The authority has not kept such statistics

(b) We do not have the requested statistical breakdowns.

(c) and (d)

In formulating relevant bilateral arrangements for the Working Holiday Scheme (WHS arrangements), the Hong Kong Special Administrative Region (HKSAR) Government has taken into account the protection to be afforded to the working holidaymakers. Of the eight countries which have already signed a WHS arrangement with Hong Kong, seven of them (including New Zealand, Ireland, Germany, Japan, Canada, South Korea and France) have a compulsory requirement whereby applicants have to take out medical insurance for their entire period of stay failing which they would not be granted working holiday visas.

For Australia, given that all other WHS agreements it has hitherto signed with other jurisdictions do not contain any requirement on insurance, the Australian authorities hold the view that the provisions in the WHS arrangement with Hong Kong should align

with them and hence there is no provision requiring the applicants to take out insurance policy during their stay. However, the Australian authorities have included in its application form and other publicity materials a clear reminder to the applicants to take out suitable medical insurance to cover possible costs that may be incurred in Australia. In parallel, the HKSAR Government has, through our websites, pamphlets and briefing sessions at schools, raised participants' safety awareness and appealed to all participants that, regardless of which country they are going to, they should take out suitable medical insurance to cover possible costs incurred while they are abroad.

Any HKSAR residents, including working holidaymakers, may approach the relevant Chinese Embassy/Consulate for assistance, or call the 24-hour hotline of the Assistance to Hong Kong Residents Unit (AHU) of the Immigration Department at (852)1868 if they are involved in accidents abroad. The Chinese Embassy/Consulate concerned and AHU will provide assistance as appropriate according to the circumstances of the cases, such as reissuing travel documents, contacting families, referring them to local lawyers, doctors and/or interpreters, and liaising with the local authorities, and so on. AHU would also liaise with other government departments for assistance where necessary.

### **Measures to Support Residential Care Homes for Elderly in Recruiting and Retaining Paramedical and Nursing Staff**

21. **DR JOSEPH LEE** (in Chinese): *President, it is learnt that there has been a long-standing shortage of paramedical and nursing staff in residential care homes for the elderly (RCHEs). The Government has provided additional funding of \$356 million, for the three-year period from 2012-2013 to 2014-2015, to support the RCHEs under non-governmental organizations (NGOs) and the "EA1 homes" under the Enhanced Bought Place Scheme (the RCHEs concerned) in recruiting and retaining paramedical staff. Some members of the sector have relayed that the provision of more training opportunities for nurses working in RCHEs would help RCHEs retain nursing staff. In this connection, will the Government inform this Council:*

- (a) *of the total number of the RCHEs concerned from which applications for the aforesaid additional funding the authorities have received, the respective numbers of applications approved and rejected, as well as the total amount of funding granted (with a breakdown by type of RCHEs), since last year;*
- (b) *of the number of paramedical staff employed last year by the RCHEs concerned using the aforesaid additional funding and the total amount of funding involved, as well as the number of RCHEs involved (with a breakdown by type of RCHEs and grade of the staff concerned);*
- (c) *of the respective average numbers of residents, nurses and paramedical staff in the RCHEs which have been granted the aforesaid additional funding; if it knows the average turnover rate of the paramedical staff in the RCHEs concerned in each of the past five years, and whether the additional funding had helped alleviate the turnover of such staff; if it had not, whether the authorities will further increase the funding to improve the situation; if they will do so, of the details; if not, the reasons for that; and*
- (d) *whether it knows the average nurse-to-resident ratios, the average expenditure incurred on training in-service nurses, as well as the average person-times of staff receiving such training and the respective contents of the relevant programmes, in various types of RCHEs in each of the past five years; whether the authorities will consider increasing the provision of funding to provide training subsidies to nurses working in RCHEs, so as to ensure good nursing care quality in RCHEs; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, my reply to the question raised by Dr Joseph LEE is as follows:

- (a) An additional funding of \$356 million has been provided to the Social Welfare Department (SWD) for allocation to subvented NGOs which need to employ paramedical staff as well as private RCHEs offering EA1 places under the Enhanced Bought Place

Scheme (EBPS) from 2012-2013 to 2014-2015 to allow them to offer more competitive salaries for the recruitment and retention of paramedical staff.

Altogether 75 out of the 77 eligible subvented NGOs (including service providers of day-time and residential care services for the elderly) and 36 eligible private EA1 homes under the EBPS have accepted the additional funding allocation. A total of some \$355 million has been disbursed.

- (b) Under the funding arrangement, the subvented NGOs and EBPS homes are required to submit to the Administration annual financial reports by the end of October 2013, 2014 and 2015 respectively and disclose the amount of additional funding spent. By the end of October 2015, they are also required to submit a full report on how they have utilized the additional funding during the three-year period, including the number of paramedical staff that they have so engaged. Since the full report is not yet due for submission, the SWD is unable to provide at this stage the breakdown of how such resources have been used, including the number of paramedical staff employed.
- (c) The organizations which have received the aforesaid additional funding operate different types of service units, including rehabilitation service units, day-time or residential elderly service units. There are about 3 700 paramedical posts (including posts at non-elderly service units) in the reference establishment of these organizations. Of these posts, about 3 000 are nurses, some 560 are physiotherapists and occupational therapists, and the remaining 110 or so are speech therapists and clinical psychologists. The subvented RCHEs and EBPS homes which have received additional funding are providing services for about 20 000 elderly residents.

The SWD does not maintain statistics on the turnover rate of paramedical staff in elderly service units. However, it is widely recognized by the sector that the additional funding has enabled the operators to offer more competitive salaries for the recruitment and retention of paramedical staff, thus alleviating the problem of staff turnover. The Administration will continue to monitor closely the

manpower situation of paramedical and nursing staff in the elderly service sector, and formulate appropriate measures accordingly.

- (d) RCHEs are required to employ appropriate nurses and nursing staff (including health workers) in accordance with the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) or the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165), and other service/contract requirements applicable to those RCHEs with subsidized places. The Licensing Office of the Residential Care Homes for the Elderly of the SWD conducts inspections from time to time at RCHEs and monitors the quality of services (including manpower arrangement) of RCHEs according to the Residential Care Homes (Elderly Persons) Ordinance and the relevant provisions.

To facilitate RCHEs to enhance the quality of services, the SWD provides training for staff of elderly service units on a regular basis. In 2013-2014, the SWD will offer 180 and 300 training places to professional staff (that is, social worker and paramedical staff) and non-professional staff of elderly service units respectively.

The SWD does not keep any record on the average nurse-to-resident ratio in RCHEs, expenditure for training in-service nurses, attendance and content of the training courses concerned.

### **Supply of Residential Flats**

22. **DR KWOK KA-KI** (in Chinese): *President, the Chief Executive pointed out in this year's Policy Address that the Government would take a number of strong measures to increase housing land supply in the short to medium term. He estimated that a total of 67 000 first-hand units should come on the market in the next three to four years. However, according to the land sales records of the Lands Department (LandsD), only about 9 200 units were involved in the private residential developments for which Pre-sale Consents were issued between the third quarter of 2012 and the first quarter of 2013. In this connection, will the Government inform this Council:*

- (a) *of the target numbers of Pre-sale Consents and Certificates of Compliance to be issued in each quarter of the next four years, as well as the number of units involved; how the Government ensures that a total of 67 000 first-hand units will come on the market in the next three to four years as mentioned by Chief Executive; whether, according to the latest estimate, such target can be achieved; if it cannot, of the reasons for that, whether any remedial measures have been taken, and whether it has assessed the impact of such situation on property prices; if such an assessment has been made, of the details;*
- (b) *how the Government monitors the trend of residential property prices in Hong Kong; whether it has regularly reviewed the effectiveness of the monitoring measures; if it has, of the review outcome; of the respective changes in the sale price indexes of first-hand and second-hand residential units in each quarter between 1 July 2012 and 31 May 2013;*
- (c) *as Chief Executive announced in August last year that 36 sites originally designated for "government, institution or community facilities", measuring 27 hectares in total, as well as other government sites, would be rezoned for housing development, of the latest development in this respect;*
- (d) *as it has been stated in the Policy Address that 13 sites in Green Belt (GB) areas, measuring 57 hectares in total, which are devegetated, deserted or formed, are suitable for rezoning for residential use, of the latest development in this respect;*
- (e) *as it has been stated in the Policy Address that 16 industrial sites, measuring 30 hectares in total, are suitable for rezoning for residential use, of the latest development in this respect;*
- (f) *of the number of residential sites sold by the Government each year from 2009 to 31 May of this year, together with a breakdown in table form by the class of residential sites (that is, Residential Site Class A, B, C and D);*



- (g) of the number of residential sites, as estimated by the Government, which will be sold each year from this year to 2017, together with a breakdown in table form by the class of residential sites;
- (h) of the number of applications for Pre-sale Consents being vetted for approval as at 31 May 2013, and the number of residential units involved; and
- (i) of the numbers of Certificates of Compliance and Consents to Assign issued by the Government during the period between 2009 and 31 May this year, as well as the respective numbers of residential units involved (set out in the table below)?

		<i>Certificate of Compliance</i>	<i>Consent to Assign</i>
2009	<i>Number issued</i>		
	<i>Number of residential units involved</i>		
2010	<i>Number issued</i>		
	<i>Number of residential units involved</i>		
2011	<i>Number issued</i>		
	<i>Number of residential units involved</i>		
2012	<i>Number issued</i>		
	<i>Number of residential units involved</i>		
2013 (As at 31 May)	<i>Number issued</i>		
	<i>Number of residential units involved</i>		

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, the figure of around 67 000 first-hand units in the private residential sector in the next three to four years is estimated with regard to information available to the Government on land supply and the progress of developers obtaining, for individual projects, development approvals at different stages. The figure includes unsold units of completed projects, units under construction but not yet sold or not yet offered for

sale, and units from the disposed land where construction may start anytime. Nevertheless, the actual supply of private housing units from different private housing land supply sources depends on the actual design of buildings and construction progress of the developments, as well as when the developers will put up the units for sale in the market. These are commercial decisions and marketing strategies at the sole discretion of developers that are beyond the control of the Government.

As land supply is one of the important factors that affect property prices, the Government's aim in respect of private housing land supply is to maintain on average the provision of land for building about 20 000 residential units each year. The Government will continue to increase land supply to meet the market demand for private housing.

I reply to the various parts of the question as follows:

- (a) The Government has not set any target for issuing pre-sale consents and Certificates of Compliance for each quarter in the next four years. The reason is that these figures would be affected by an array of factors, such as the construction progress of individual projects, the marketing strategies of individual developers and whether all the required documents have been submitted in a timely manner. Nevertheless, the Government has already implemented measures to expedite the process of granting pre-sale consents. The LandsD has redeployed its resources and will endeavor to meet the developers, their Authorized Persons and solicitors to discuss pending issues regarding their applications, as and when necessary and practicable, with a view to expediting the approval of pre-sale consents.
- (b) The price indices for all classes between July 2012 and April 2013 as published in the Rating and Valuation Department's Hong Kong Property Review (Monthly Supplement) in June 2013 are set out in Annex A. The price indices cover all transactions in the secondary market. For the primary market, the Government does not compile similar indices. This is because developers may adopt different marketing strategies for different developments and thus sale prices of first-hand units vary significantly. Also, the transaction volume

of the primary market is relatively small. Most of the transactions involve the sale of uncompleted units and the length of the pre-sale period varies. As a result, the situation cannot be accurately reflected by a generic price index.

The Government has been continuously monitoring the residential property market, with reference to a basket of indicators including property prices, the housing affordability of the general public, the volume of property transactions, the supply of residential properties, mortgage payments, rent-to-income ratio, and so on, and has introduced appropriate measures to ensure its healthy and stable development.

- (c) The Planning Department (PlanD) has proposed that 36 Government, Institution or Community (GIC) and other government sites, with an area measuring about 27 hectares in total, be converted for housing development. They are estimated to be capable of providing about 11 900 public and private residential units. As at 19 June 2013, 16 of these sites had been zoned or were going through town planning procedures for rezoning for residential use. The PlanD is also preparing for the rezoning of the remaining 20 sites, and has consulted the respective District Councils for the rezoning proposals of five of the sites. The PlanD will continue to process the rezoning of the remaining sites as a matter of priority, and identify sites currently zoned for GIC uses and other government sites for rezoning to housing use without affecting the provision of community facilities.
- (d) In the PlanD's Stage 1 GB Review, 13 GB sites which are devegetated, deserted or formed, measuring about 57 hectares in total and are estimated to provide about 23 000 residential units, are recommended for rezoning for residential use. The PlanD has progressively commenced the rezoning work for these GB sites. The rezoning of one of the sites located at the junction of Clear Water Bay Road and Pik Sha Road for residential use was gazetted on 10 May 2013. As for the remaining 12 sites, it is estimated that the rezoning procedures for nine of them will be completed by late 2014, and the rezoning of the other three sites will be completed as soon as possible afterwards. The PlanD's Stage 2 GB Review is

also underway with a view to identifying more sites suitable for rezoning for residential use.

- (e) In its last round of review of industrial land in 2009, the PlanD proposes to rezone 16 sites measuring 30 hectares in total for residential use. Amongst these sites, 13 (including eight privately-owned sites and five government sites) have completed or are undergoing the rezoning process, and are estimated to be capable of providing about 14 600 units upon redevelopment. The PlanD will commence the rezoning of the three remaining privately-owned sites at a later stage, which are estimated to be capable of providing about 5 800 units upon redevelopment.
- (f) The figures of various types of residential sites sold by the Government from the 2009-2010 to 2013-2014 financial years (as at mid of June 2013) and residential sites not yet sold in the 2013-2014 Land Sale Programme (LSP) are at Annex B.
- (g) The results of the Government's sale of land is dependent on market factors. The Government does not estimate the number of various types of residential sites to be sold after 2013-2014. The Government will continue to announce the annual LSP in each financial year and set out sites estimated to be available for sale, and make quarterly announcements of sites to be made available for sale in the respective quarters in advance, so as to provide a transparent and certain land supply programme to the market, and at the same time allow the Government to respond to market demand and adjust the pace of land sale, in order to maintain a steady supply of land to the market.
- (h) According to the records of the LandsD, there were a total of 26 residential developments awaiting approval of pre-sale consents as at 31 May 2013, which involves a total of 14 975 units.
- (i) According to the records of the Transport and Housing Bureau and the LandsD, the numbers of Certificates of Completion and Consent to Assign issued by the Government between 2009 and 31 May 2013, and the number of residential units involved, are set out at Annex C.

## Annex A

Price Indices of the Ratings and Valuation Department  
(July 2012 - April 2013)

	<i>Month</i>	<i>Price Index</i>	<i>Change</i>
2012	July	206.1	-
	August	210.8	2.3%
	September	217.8	3.3%
	October	223.7	2.7%
	November	225.9	1.0%
	December	227.6	0.8%
2013	January	232.5	2.2%
	February*	239.8	3.1%
	March*	239.5	-0.1%
	April*	237.9	-0.7%

Note:

\* Denotes provisional figures

## Annex B

Various types of residential sites sold by the Government  
in the 2009-2010 to 2013-2014 financial years  
(as at 14 June 2013)

<i>Land use classification according to the LSP</i>	<i>Financial year</i>				<i>2013-2014 (as at 14 June)</i>
	<i>2009-2010</i>	<i>2010-2011</i>	<i>2011-2012</i>	<i>2012-2013</i>	
Residential R1	1	3	4	1	-
Residential R2	-	4	5	4	3
Residential R3	2	4	9	14	1
Residential R4	-	-	5	1	1
Residential and Commercial	1	-	1	2	-
Hotel and Residential/Commercial	-	-	1	-	-

Note:

The above table does not include non-residential sites sold in the respective financial years.

Residential sites not yet sold in the 2013-2014 LSP  
(as at 14 June 2013)

<i>Land use classification according to the LSP</i>	<i>Number of sites not yet sold</i>
Residential R1	3
Residential R2	17
Residential R3	23 (Including five sites being tendered or have been announced for tendering)
Residential R4	2 (Including one site being tendered or have been announced for tendering)

Note:

The above table does not include non-residential sites in the 2013-2014 LSP.

Annex C

Certificates of Compliance and pre-sale consents issued by the Government  
(2009 to 31 May 2013)

		<i>Certificate of Compliance</i>	<i>Consent to Assign</i>
2009	Number issued	43	3
	Number of residential units involved	11 549	3 421
2010	Number issued	31	1
	Number of residential units involved	9 572	1 688
2011	Number issued	39	3
	Number of residential units involved	11 170	4 144
2012	Number issued	25	1
	Number of residential units involved	9 061	164
2013 (as at 31 May)	Number issued	10	3
	Number of residential units involved	2 708	1 284

Note:

The numbers of Certificates of Compliance issued as shown in the table above include those issued to both developments involving residential units and developments not involving residential units, but exclude developments exempted in accordance with the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).

**BILLS****First Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: First Reading.

**WASTE DISPOSAL (AMENDMENT) BILL 2013**

**CLERK** (in Cantonese): Waste Disposal (Amendment) Bill 2013.

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

**Second Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Second Reading.

**WASTE DISPOSAL (AMENDMENT) BILL 2013**

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I move the Second Reading of the Waste Disposal (Amendment) Bill 2013 (the Bill) to enhance control over the fly-tipping of construction waste on private land.

(THE PRESIDENT'S DEPUTY, MR ANDREW LEUNG, took the Chair)

Over the past few years, there has been widespread concern over the fly-tipping of construction waste on private land. While there is a number of ordinances, such as the Town Planning Ordinance, the Public Health and Municipal Services Ordinance and the Land Drainage Ordinance, in place to regulate this problem from different angles, we have responded promptly to public concern by taking administrative measures to seek improvement. These measures include strengthening cross-departmental co-operation through a

newly-established co-ordination mechanism and installing railings, road barriers, and so on, at fly-tipping black spots to prevent fly-tipping.

Moreover, the Environment Bureau has reviewed the effectiveness of the Waste Disposal Ordinance and now proposes to introduce improvement measures through this Bill. Generally speaking, under the existing legislation, a person is required to obtain permission from any owner or lawful occupier of the private land in question before depositing construction waste on that piece of land. However, the authorities may not investigate whether a depositing activity has been granted such permission according to law until we receive a complaint against that activity. If the complaint involves more than one piece of private land, it may be difficult for law-enforcement officers to collect evidence. For example, it is not unusual to receive incomplete or conflicting information from the depositor and the land owner or lawful occupier. Some cases involve uncertainty in ownership due to outdated records. Therefore, more often than not, it is difficult for law-enforcement officers to collect sufficient evidence in a suspected fly-tipping case within the statutory time limit of six months for initiating prosecution. This has undermined the deterrent effect of the existing Ordinance.

In the Bill, we propose enhancing the control over the depositing of construction waste on private land by requiring a prior permission under a new set of procedures. A person who wishes to carry out a depositing activity on private land must first obtain the written permission of all relevant land owners by using the form specified by the Director of Environmental Protection. He will then be required to submit the written permission, together with other documents required, to the Environmental Protection Department (EPD). The EPD officers, after completing the vetting procedure, will affix an acknowledgement to validate the permission.

Upon the implementation of new requirements, the authorities will receive prior notification of any deposition of construction waste on private land. It will facilitate the enhancement of control over depositing activities. Meanwhile, as the authorities will then be allowed to initiate prosecution against fly-tipping once a depositing activity is revealed to have failed to comply with the new procedures, the enforcement effectiveness and deterrent effect will increase. Furthermore, as all owners of the relevant land will be required to give their prior



permission, a depositing activity will be considered as illegal if any of these owners are not informed of the activity. This requirement will give all owners of the relevant land the greatest protection.

Our present proposals are more or less similar to those we put forward in the public consultation in 2010. In February 2013, the Legislative Council Panel on Environmental Affairs held a meeting to discuss the fly-tipping of construction waste. During the meeting, a number of Members asked the Government to control this problem by way of legislation expeditiously. With the introduction of this Bill, we think we should be able to meet some of their demands. We will provide support for the scrutiny by the Legislative Council in order for the Bill to be passed and implemented as soon as possible.

With these remarks, I beg to move. Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Waste Disposal (Amendment) Bill 2013 be read the Second time.

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

### **Resumption of Second Reading Debate on Bills**

**DEPUTY PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Inland Revenue (Amendment) (No. 2) Bill 2013.

### **INLAND REVENUE (AMENDMENT) (NO. 2) BILL 2013**

#### **Resumption of debate on Second Reading which was moved on 8 May 2013**

**DEPUTY PRESIDENT** (in Cantonese): Mr Alan LEONG, member of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

**MR ALAN LEONG** (in Cantonese): Deputy President, the Inland Revenue (Amendment) (No. 2) Bill 2013 (the Bill) seeks to amend the Inland Revenue Ordinance to give effect to the proposals concerning tax concessions in the Budget for the 2013-2014 financial year. These proposals include: (1) increasing both the child allowance and the additional one-off child allowance in the year of birth for each eligible child from \$63,000 to \$70,000 under salaries tax and tax under personal assessment with effect from the year of assessment 2013-2014; (2) enhancing the deduction ceiling for expenses of self-education from \$60,000 to \$80,000 under salaries tax with effect from the year of assessment 2013-2014; and (3) reducing salaries tax, tax under personal assessment and profits tax for the year of assessment 2012-2013 by 75%, subject to a ceiling of \$10,000 per case.

The Bills Committee has held one meeting to discuss with the Administration, and it supports the Bill. During the deliberations, members have examined the justifications for the proposed tax concessions, the expected number of taxpayers to be benefitted and the financial implications of the proposals to the Government. Members note that the proposed increase in the child allowance and the additional one-off child allowance aim at alleviating taxpayers' burden in raising their children, and the proposed increase in the maximum amount of deduction for expenses of self-education under salaries tax is to encourage self-education and lifelong learning. As regards the proposed tax reduction for salaries tax, tax under personal assessment and profits tax for the year of assessment 2012-2013, they aim at easing the community's burden amidst an uncertain external economic outlook and the risk of rising inflation. The Administration expects that over 1.8 million taxpayers and 119 000 tax-paying companies will benefit from the above proposals which will cost the Government about \$9.8 billion in total.

Noting that there have been different views and suggestions from different sectors of the community on the tax concessions to be introduced, the Bills Committee has enquired how the Administration has worked out the proposed tax concessions. The Administration has explained that in formulating each year's Budget, the Financial Secretary will engage the public, and meet with Legislative Council Members, professional bodies and other relevant parties to hear their views and suggestions. The views expressed by the public and various parties,

together with the Administration's assessments of the prevailing local and external economic environment and the economic outlook, impacts of the proposed measures on the Government's fiscal position as well as the tax regime, and so on, will be taken into account in finalizing the taxation measures and concessionary measures to be introduced. The Administration has stressed that it conducts regular reviews of the tax regime of Hong Kong, including the tax bands and rates of various taxes, to make suitable adjustments and develop appropriate tax concessionary measures.

The Bills Committee has not proposed Committee stage amendments (CSAs) to the Bill and supports the CSAs proposed by the Administration to introduce technical amendments to the numbering of new section 89(11) and Schedules 28 and 29 in the Bill.

The Bills Committee supports the resumption of the Second Reading debate on the Bill.

I so submit. Thank you, Deputy President.

**MR SIN CHUNG-KAI** (in Cantonese): Deputy President, Mr Alan LEONG has just reported the deliberations on behalf of the Bills Committee. This Bill is very simple, but the Democratic Party is disappointed with it since the Government has just made very minor amendments to the tax concessions proposed in this year's Budget. Just now, Mr Alan LEONG has stated these few amendments, which include increasing the child allowance from \$63,000 to \$70,000, enhancing the deduction ceiling for expenses of self-education from \$60,000 to \$80,000, and reducing salaries tax by 75%, subject to a ceiling of \$10,000 per case.

As there is a huge surplus in this year's Budget, the Government should review the personal allowance and tax bands every year by, at least, taking into account the inflation. It may also consider reviewing the regime so that the various allowances can be adjusted to catch up with the living standard. By doing so, the Government can avoid imposing a heavier tax burden on the

grassroots as a result of it not increasing the allowances according to inflation and other factors.

The Democratic Party believes that the Government can actually do better in offering tax concessions. A tax reduction of \$10,000 is just a small favour. It is definitely the wish of the Democratic Party to see the Government spend its surplus wisely. However, as the Government is reluctant to do anything, it should at least avoid imposing an excessive burden on taxpayers. I hope that, in the next budget, the Government can compensate for its failure to increase the allowance under salaries tax this year. We understand that the consultation on the budget will only be conducted at the end of this year, however, we have to complain that the Government has neither increased this allowance nor reviewed the tax bands this year. As a result, both the allowances and tax bands have not been adjusted to catch up with the inflation and changes in the economic condition.

I so submit.

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

(No Member indicated a wish to speak)

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

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, first of all, I wish to thank the Chairman of the Bills Committee, Mr Kenneth LEUNG, member of the Bills Committee Mr Alan LEONG, as well as other members of the Bills Committee and colleagues in the Legislative Council Secretariat for the hard work they have done to facilitate the smooth completion of the scrutiny of the Bill. Also, I wish to thank Members

for their support for the resumption of the Second Reading debate of the Inland Revenue (Amendment) (No. 2) Bill 2013 (the Bill) today to enable the tax concessions proposed in the Bill to be implemented expeditiously.

The Bill seeks to amend the Inland Revenue Ordinance (IRO) to implement the concessionary revenue measures proposed in the 2013-2014 Budget, and to provide for transitional matters.

To alleviate taxpayers' burden in raising their children, the Bill proposes that, with effect from the year of assessment 2013-2014, the child allowance under salaries tax and tax under personal assessment for each eligible child will be increased from the current \$63,000 to \$70,000, so will the additional one-off child allowance in the year of birth.

To encourage self-education and lifelong learning, the Bill also proposes to increase the maximum amount of deduction for expenses of self-education under salaries tax from \$60,000 to \$80,000 per annum with effect from the year of assessment 2013-2014.

The above proposals, that is, the increase in the child allowance and the maximum amount of deduction for expenses of self-education, will benefit about 310 000 taxpayers and cost the Government a total of some \$420 million per year.

To ease the community's burden amidst an uncertain external economic outlook and the risk of rising inflation, the Bill also proposes a one-off reduction of salaries tax, tax under personal assessment and profits tax for 2012-2013 by 75%, subject to a ceiling of \$10,000 per case. The reduction will be reflected in the taxpayers' final tax payable for the year of assessment 2012-2013. About 1.53 million taxpayers will benefit from the proposed one-off reduction of salaries tax and tax under personal assessment. The proposed one-off reduction of profits tax will benefit about 119 000 tax-paying companies which are liable to profits tax. These proposals are expected to cost the Government about \$9.4 billion in total.

We are glad to know that the Bills Committee supports the resumption of the Second Reading debate on the Bill today and agrees to the technical amendments proposed by the Administration to clauses 3, 4 and 7 regarding the numbering of section 89(11) and Schedules 28 and 29 accordingly. To put it simply, the reason for proposing these technical amendments is that, apart from this Bill, there is another Bill proposing the addition of a new subsection to section 89 of the IRO and the addition of a new schedule to the IRO. As this Bill was gazetted on a later date than the other Bill, its proposed new subsection and schedules were numbered in sequence to follow the new subsection and schedule proposed by the other Bill. However, as the Second Reading debate on the present Bill is resumed at a Council meeting earlier than that on the other Bill, we have to make technical amendments to renumber the new subsection and schedules proposed in this Bill to move them forward.

Deputy President, I implore Members to support the passage of this Bill so that these measures can be put into effect early.

I so submit. Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Inland Revenue (Amendment) (No. 2) Bill 2013 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Inland Revenue (Amendment) (No. 2) Bill 2013.

Council went into Committee.

### **Committee Stage**

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

### **INLAND REVENUE (AMENDMENT) (NO. 2) BILL 2013**

**DEPUTY CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Inland Revenue (Amendment) (No. 2) Bill 2013.

**CLERK** (in Cantonese): Clauses 1, 2, 5 and 6.

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

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 5 and 6 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3, 4 and 7.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy Chairman, I move the amendments to clauses 3, 4 and 7, as set out in the paper circularized to Members.

I have briefly explained the reasons for moving the amendments just now, and I will now give Members some more detailed information. Two Bills, including the Bill on which Second Reading debate is resumed today and the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012, propose the addition of a clause under section 89 of the Inland Revenue Ordinance and new Schedules. As the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012 gazetted in December 2012 already added new clause 89(10) and a new Schedule 27 to the Inland Revenue Ordinance, the new clause and the new schedule should respectively be numbered as section 89(11) and Schedules 28 and 29 when this Bill was gazetted in April 2013. However, since the date on which the Second Reading debate of the Bill is resumed in the Legislative Council is earlier than the date on which the Second Reading debate of the Inland Revenue and Stamp Duty Legislation (Alternative Bond Schemes) (Amendment) Bill 2012 is resumed in the Legislative Council, we have to move CSAs to propose technical amendments to the numbering of new clauses 3, 4 and 7 to be added to the Bill and the Schedules, and change the relevant numbers from clause 89(11) and Schedules 28 and 29 to clause 89(10) and Schedules 27 and 28.



Deputy Chairman, these are purely technical amendments. I hope Members will support these amendments.

Thank you, Deputy Chairman.

*Proposed amendments*

**Clause 3 (see Annex I)**

**Clause 4 (see Annex I)**

**Clause 7 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3, 4 and 7 as amended.

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 3, 4 and 7 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**DEPUTY CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

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

### **INLAND REVENUE (AMENDMENT) (NO. 2) BILL 2013**

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

Inland Revenue (Amendment) (No. 2) Bill 2013

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

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Inland Revenue (Amendment) (No. 2) Bill 2013 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Inland Revenue (Amendment) (No. 2) Bill 2013.

## **MOTIONS**

**DEPUTY PRESIDENT** (in Cantonese): Motions. Proposed resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance.

Members who wish to speak on the motion will please press the "Request to speak" button.

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

**PROPOSED RESOLUTION UNDER ARTICLE 73(7) OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND SECTION 7A OF THE HONG KONG COURT OF FINAL APPEAL ORDINANCE (CAP. 484)**

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, I move that the motion under my name, as printed on the Agenda, be passed, that this Council endorses the appointments of Mr Justice Joseph Paul FOK as a Permanent Judge, Mr Justice Patrick CHAN Siu-oi as a non-permanent Hong Kong Judge, Mr James SPIGELMAN and Mr William GUMMOW as Non-permanent Judges from other common law jurisdictions to the Hong Kong Court of Final Appeal (CFA).

The CFA is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice and the Permanent Judges. Non-permanent Judges may be invited to sit and they may come from Hong Kong or from other common law jurisdictions. When hearing and determining appeals, the CFA is constituted by five Judges, comprising the Chief Justice, three permanent Judges, and one non-permanent Hong Kong Judge or one non-permanent common law Judge.

Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance, Judges of the Courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission (JORC). In addition, Article 90 of the Basic Law provides that in the case of the appointment of Judges of the CFA, the Chief Executive shall obtain the endorsement of the Legislative Council.

The current appointment of Permanent Judge of the CFA is proposed because Mr Justice CHAN will retire as a Permanent Judge in October 2013. The JORC has recommended to the Chief Executive to appoint Mr Justice FOK, Justice of Appeal of the Court of Appeal of the High Court to fill the vacancy. Mr Justice FOK is an outstanding lawyer who has considerable experience in handling civil (including constitutional) cases and criminal cases. He is a Judge of eminent standing and reputation. The appointment will be for a term of three years with effect from 21 October 2013.

As for non-permanent Judges, at present, there are 15 non-permanent Judges, comprising five non-permanent Hong Kong Judges and 10 Non-permanent Judges from other common law jurisdictions. Considering the heavy caseload of the CFA and in order to provide more flexibility in judicial deployment, there is merit in increasing the number of both non-permanent Hong Kong Judges and Non-permanent Judges from other common law jurisdictions.

The JORC noted that Mr Justice CHAN will become eligible for appointment as a non-permanent Hong Kong judge upon his retirement as a Permanent Judge. Mr Justice CHAN is a Judge of the highest quality and utmost integrity. Elevated to the CFA in 2000, he is versatile with experience in handling appeals in both civil and criminal matters. He would be an invaluable addition to the list of non-permanent Hong Kong Judges, and would continue to have tremendous contributions to the CFA. Accordingly, the JORC has recommended to the Chief Executive his appointment as a non-permanent Hong Kong Judge for a term of three years with effect from 21 October 2013.

At the same time, the JORC has recommended the appointments of the Mr James SPIGELMAN and Mr William GUMMOW as non-permanent common law Judges. Mr SPIGELMAN has been the Chief Justice of the Supreme Court of New South Wales and has retired from that office since May 2011. Mr GUMMOW has been a Justice of the High Court of Australia and has retired from that office since October 2012. As judges of considerable eminent standing and reputation, they will be a great asset to the CFA.

The Chief Executive is pleased to accept the recommendations of the JORC on the appointments of the four Judges as Judges to the CFA. Subject to the endorsement of this Council, the appointment of the two non-permanent common law Judges would take effect in July 2013.

In accordance with the procedures previously endorsed by the House Committee, the Administration issued a paper on 8 April 2013 to inform the House Committee that the Chief Executive had accepted the recommendations of the JORC on these appointments. The curriculum vitae of the four Judges were also set out in the paper. Representatives from the Administration and the Secretary to the JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointments on 23 April and answered members' questions. I would like to thank Mr Dennis KWOK, Chairman of the Subcommittee, and

other members of the Subcommittee for their support of the proposed appointments.

I invite Members to endorse the appointments. Thank you, Deputy President.

**The Chief Secretary for Administration moved the following motion:**

"RESOLVED that the following appointments be endorsed —

- (a) the appointment of the Honourable Mr Justice Joseph Paul Fok as a permanent judge of the Hong Kong Court of Final Appeal pursuant to section 7 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (the Ordinance);
- (b) the appointment of the Honourable Mr Justice Patrick Chan Siu-oi as a non-permanent Hong Kong judge of the Hong Kong Court of Final Appeal pursuant to section 8 of the Ordinance;
- (c) the appointment of the Honourable James Spigelman as a judge of the Hong Kong Court of Final Appeal from another common law jurisdiction pursuant to section 9 of the Ordinance; and
- (d) the appointment of the Honourable William Gummow as a judge of the Hong Kong Court of Final Appeal from another common law jurisdiction pursuant to section 9 of the Ordinance."

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

**MR DENNIS KWOK** (in Cantonese): Deputy President, before I proceed further with my speech, I would like to seek a clarification from the Chief Secretary.

Just now, she said that the appointment of Mr Justice FOK is for a term of three years. I wonder if I have caught it incorrectly, or the Chief Secretary .....

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Your question is about the appointment, right? Perhaps I will ask my colleague to ..... (*The Chief Secretary sought confirmation from her colleague*) Pardon me, Deputy President, I made a mistake just now. The appointment of Mr Justice FOK is not for a fixed term of three years. In other words, the appointment shall be effective until his normal retirement age. My apologies. This I have clarified.

**MR DENNIS KWOK** (in Cantonese): Thanks to the Chief Secretary for the clarification.

**MR DENNIS KWOK**: Deputy President, in my capacity as Chairman of the Subcommittee on Proposed Senior Judicial Appointments, I wish to report briefly on the deliberations of the Subcommittee.

The Subcommittee notes that the Judicial Officers Recommendation Commission (JORC) made recommendations on judicial appointments in accordance with Article 92 of the Basic Law which provides that Judges of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities alone. However, members have urged for greater transparency and accountability in the senior judicial appointment process, such as making the criteria for appointment clearer, for better public scrutiny in the future.

Members have also raised concern about the independence of the senior judicial appointment process because the Secretary for Justice, being one of the Principal Officials under the Political Appointment System, is an ex officio member of the JORC.

The Administration has explained that the membership of the Secretary for Justice in the JORC would not undermine the independence of the senior judicial appointment process. Being the principal adviser on legal matters to the Chief

Executive and the head of the Department of Justice, the Secretary for Justice is in a unique position and has considerable knowledge to contribute to the JORC's deliberations in respect of judicial appointments. According to the Administration, such views are also shared by the Judiciary.

The Subcommittee has considered the supplementary information provided by the Administration on the proposed senior judicial appointments. The Subcommittee supports the appointments of the Honourable Mr Justice Joseph Paul FOK, SC, JP as a Permanent Judge of the Court of Final Appeal (CFA), the Honourable Mr Justice Patrick CHAN Siu-oi as a non-permanent Hong Kong Judge of the CFA, the Honourable James SPIGELMAN, AC, QC and the Honourable William GUMMOW, AC as the non-permanent Judges of other common law jurisdictions of the CFA, as recommended by the JORC.

Deputy President, I shall now state my personal views on the matter.

William BLACKSTONE, an English common law jurist in 18th century, once said, "In this distinct and separate existence of the judicial power, in the peculiar body of men, nominated indeed, but not removable at pleasure, by the crown, consists one main preservative of the public liberty; which cannot subsist long in any state" — or in our case a Special Administrative Region — "unless the administration of common justice be in some degree separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty, and property, of the subject would be in the hands of arbitrary Judges, whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of law; which, though legislators may depart from, yet Judges are bound to observe. Were it joined with the executive, this union might soon be an overballance for the legislative."

It is therefore of utmost importance that we do not interfere with the work of the Judiciary in both the judicial appointment process and the work of Judges in the courtrooms. Members of the executive branch, the legislature and the Judiciary should all act in accordance with our constitutional duty to uphold judicial independence. I hope we will all dedicate our efforts to protecting the independence of the Judiciary in safeguarding the independence of the Judiciary which is the bedrock of our rule of law.



Deputy President, the JORC bears the responsibility of appointing judicial members based on their merits and professional judicial qualities. Judges appointed must be independent in their judgments, free from any interference, no matter whether they are from the public, from the rich and the powerful, or from the Government. The appropriateness of the membership of the Secretary for Justice has been frequently questioned by the Bar Association, the legal profession and some Members of this Council.

The Secretary for Justice is a political appointee from the Administration and is held responsible for all prosecutions and in any judicial reviews concerning the Government. This posts the question of whether the presence of the Secretary for Justice in the JORC is appropriate, indeed, whether he should be an *ex officio* member of the JORC. This opens the gap for the potential interference with any decision of the appointment of Judges. More importantly, Deputy President, this gives the public a perception of interference. This arrangement may weaken the confidence of the public in judicial independence. I must emphasize that the judicial appointment process must guarantee the quality and independence of those appointed, and the current institutional framework could be better reformed to serve this ultimate aim and purpose.

Let me make one thing clear: we do not want, nor do we need a politicized judicial appointment process in Hong Kong. In fact, I am well aware that personal remarks against any Judges cannot be made in this Council, except in accordance with specific rules of procedure. We must not use our parliamentary privilege to interfere with the independence of the Judiciary. We, as Members of the legislature, should honour our constitutional duty to uphold judicial independence. Yet, our duty to ensure Judges are free from interference includes also our duty to ensure the integrity of the judicial appointment process. We shall relentlessly seek the improvement of the system and framework in the JORC. The aim must be evermore fairness, transparency and accountability throughout the entire process. Like the rule of law, the process of judicial appointments should be brought under the sunlight to be seen by all.

Thank you, Deputy President.

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

**MS EMILY LAU** (in Cantonese): Deputy President, I rise to speak in support of the resolution moved by the Chief Secretary for Administration that the said persons be appointed as Permanent Judge and non-permanent judges of the Hong Kong Court of Final Appeal.

Deputy President, as Mr Dennis KWOK just said, we do not wish to see the judicial appointment process politicized. There is a suggestion that the judicial appointees be invited to come before the Legislative Council to answer questions from Members, like the practice adopted in some other parliaments. But many people do not agree with this suggestion, and we do not wish the appointment process made controversial. Nonetheless, the Legislative Council is vested with such power by the Basic Law, which is in fact a substantive power. I believe it is the expectation of many that the Legislative Council will properly perform its gate-keeping role so that the appointees can truly gain the respect of the judicial sector as well as the community, and that they are capable of hearing cases fairly and impartially.

Deputy President, since 1997, although Judges did and do come under criticisms at times, the Judiciary as a whole has — I think the Deputy President also knows that — the highest reputation under the system of separation of powers. Although people may sometimes not be convinced by the Court's judgments, they believe that the Judges are uncorrupted and their judgments totally fair. Deputy President, this is very important, in particular considering our lack of a democratic system, because we value human rights and freedom, and believe that an independent and impartial judicial system is our last bulwark. In case of dispute, people will invariably bring their case to court for a decision.

Deputy President, although I support the resolution moved by the Chief Secretary today, I wish to take this opportunity to draw again the attention of the appointees, all people of Hong Kong as well as the international community how much Hong Kong people value judicial independence. We are extremely gratified for the high popularity rating of the Judiciary, which is not easy to come by.

Deputy President, we do not wish to see any people exerting pressure on the Court or the Judges. Over the years, I have heard voices from Beijing claiming that the so-called "Hong Kong people ruling Hong Kong" is actually "Judges ruling Hong Kong". In fact, some people are dissatisfied with the

Judges because if the authorities ignore the requests of the Legislative Council, we can do nothing about it, but if the Court makes a decision, the authorities have to comply. I hope the authorities will continue to do so and not engage in any confrontation with the Judges in future because it will make things worse.

It is exactly because of the Judges' superior authority that they are respected by people and hence, many people will continue to pressurize the Court. In order to allow the Court to continue performing its duties independently and impartially, the Legislative Council is prepared to play its part and hopes the authorities will also shoulder their responsibilities in case similar incidents happen. However, people are invariably disappointed by the acts of the authorities.

Deputy President, I support the resolution moved by the Chief Secretary today. I hope the appointees will impress the people that they are fair, impartial and fearless of the rich and powerful in adjudicating cases and passing judgments in Court in future, as well as upholding justice for Hong Kong people. People bring their disputes to Court because they want justice be done. I hope that under "one country, two systems" and in these shaky times as the Executive Authorities are besieged on all fronts, the Court will demonstrate to the public that it adjudicates cases independently and impartially and serve Hong Kong people continuously.

I so submit.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, I will abstain on this motion because I honestly cannot decide whether the present appointees are suitable or not. I am not a member of the legal profession, right? But regarding the suggestion that these appointees be invited to come before the Legislative Council to answer Members' questions, Members do not think it is appropriate. However, as I do not know them at all, how can I decide whether their appointments are suitable or not?

I would like to point out that people are in fact very afraid of an entity called the Committee of Political and Legal Affairs under the Chinese

Communist regime. What is this Committee of Political and Legal Affairs about? Its function is to direct the government's work in legislation, administration of justice, enforcement, and so on, particularly administration of justice and enforcement. Of course, the Committee of Political and Legal Affairs is above the Court. The worry is reasonable because it does not take too much wisdom and hard thinking to figure out that the judiciary in the Mainland adjudicates cases under one-party dictatorship. It is a well-known fact. Ranging from important political cases to nationwide sensational cases, their verdicts are all decided by the Committee of Political and Legal Affairs.

That is a fact cast in iron. Also, when XI Jinping visited Hong Kong before he became the top leader, he brought us a gift — the comment that the Court must complement the Government. Of course, Hong Kong people are really scared to their bones because such a comment is unheard of and bone-chilling for Hong Kong people. Was this comment from XI Jinping merely a casual remark or did he mean it seriously? Actually, we should have seen this coming. This Council had also discussed the comment made by CAO Erbao previously about the need to have a second governing team in Hong Kong. Was the Judiciary included in the second governing team to which he referred? If that was supposed to be a comprehensive team, the Judiciary should be included, right? Such a query is reasonable because no matter we like it or not, if our sovereign state government seeks to control the second governing team through the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region, we will naturally doubt whether our judicial system is also included in the second governing team.

Such a query has caused concern to many people, particularly those used to the notion of checks and balances. For them, it is bad enough for the Executive Authorities of Hong Kong to interfere with the Judiciary; if the Judiciary and the Executive Authorities should be muddled together, that is, the Judiciary must complement the Executive Authorities, it is even worse. Please bear in mind the injustices of our legislature as its composition has already been distorted. In that case, if the legislature also interferes with the monitoring of judicial appointments, in particular, appointments to the Court of Final Appeal (CFA), will it lead to serious consequences? This is a most realistic question.

Honestly, injustices will spread like cancer. Had we invited the Judges to appear before the Legislative Council today and answer Members' questions — assuming that we have power similar to the power of veto of the United States

Congress — the outcome would be very terrible indeed. Why? Because people holding the majority votes in the Council can veto the appointment of certain Judges whom they consider to be undesirable. I appreciate this worry. But does it mean that it is wrong for any legislative assemblies, that is, organizations similar to our Legislative Council, to vet, albeit slightly, the judicial appointments? I cannot accept this viewpoint as a matter of principle.

Deputy President, what is the composition of the judicial sector? You will definitely reply, "'Long Hair', the judicial sector is of course made up of people." That is correct. It is of course made up of people. But what are those people? Of course, they are lawyers; nothing else. Lawyers have undergone legal training, if even they ..... There are also lawyers in this Council who rarely take court cases, right? Some lawyers rarely take court cases. But if a lawyer does not build up public confidence in his capability and integrity through working on court cases, and gradually gain ascension, he will never become a Judge, right?

In other words, lawyers are also human beings actually. Just like a certain philosopher who once said that he was also a human being because he had all the characteristics of human beings such as laughter, anger, sorrow, happiness, greed, fear of death, obstinacy, selfishness, and so on. But the question is: If we believe that the system is used to govern "natural persons", and not "legal persons", I am not convinced that a lawyer working in the legal sector can automatically have his original sin forgiven by God once he steps into the judicial sector.

Therefore, different jurisdictions have different political conventions when it comes to monitoring the Judiciary. Different methods of monitoring will be adopted by different political systems and different establishments. At present, the Hong Kong system is merely based on "trust", and it must be reformed. As I see it, today, we should of course be frightened by the notion publicly advocated by XI Jinping that the Court must complement the Government's administration, or be frightened to interfere with judicial appointments because this Legislative Council itself is already a product of injustices. But it does not mean that the Legislative Council can no longer exercise monitoring from now on.

Honourable colleagues of the pan-democratic camp, the matter is in fact very simple. If we cannot exercise monitoring today, or we reduce monitoring to the minimum, they will definitely bring in the second governing team sooner or

later. Even if we can hold up against it for 10 years, we cannot do so for 15 years. By that time, if the Legislative Council cannot exercise monitoring, it will not have the power to utter even one sentence. The matter is quite simple. In other words, even if we know very well that the chosen ones are animals, we must say that these animals are human beings; even if it is clearly an "Animal Farm", we must say that it is heaven, that is, we must say that the "Animal Farm" is heaven. Hence, on this point, we cannot stick to outdated practices.

In fact, if we believe that Hong Kong must stick to the universal suffrage principle and set up a modern political system, we must consider this question, namely once universal suffrage is implemented — I think it is likely to be implemented because the Communist Party will not be everlasting — how can we deal with the relationship between the legislature and the executive authorities? Another question that I can think of is that if the situation continues to worsen, we, the so-called opposition as considered by the pro-establishment camp, must also find ways to ensure the proper exercise of checks and balances.

Meanwhile, if universal suffrage is implemented successfully, why can we not adopt a more advanced system so that the parliament genuinely elected by the people will be responsible for monitoring the Judiciary? If the parliament can monitor the Government, why can it not monitor the Judiciary? And in fact, only the parliament can monitor the judiciary. The reason is very simple. Should the Judiciary be monitored by the media? The Judiciary is sealed off, right? The judicial system itself is sealed. If the Judiciary is responsible to the Government, it means that these two branches of government under the separation of powers will join together ever closer. Actually, in terms of politics in Western countries, the hidden worry in the system of checks and balances is exactly that the three branches of government will morph into two branches, with the executive allying itself with one of the remaining two branches.

Hence, why do I abstain today? Firstly, I feel really very concerned about the judicial sector in Hong Kong because as a frequent litigant, I can say that the current standard of the High Court and the Court of Appeal is really appalling, evident in the lawsuit between me and the President, Mr Jasper TSANG. The standard is really appalling, and Mr Albert HO is also a victim. The Court has not dealt with my point of contention and ignored the fact that there is a constitution in Hong Kong. On the contrary, it has considered the case from the perspective that there is no constitution in Hong Kong. It has also ignored the

fact that the legislative assembly in Hong Kong should take precedence. But instead, it has taken the view that Hong Kong practices a system with the president enjoying absolute power and the legislative assembly serving as a "maid". That is how the case was adjudicated by the Judge. As such, what else can I do? Their points are really irrelevant. As my filibustering waged as a Member of the Legislative Council, a representative of public opinions, was guillotined by the President in defiance of the Rules of Procedure, I turned to the judicial system for assistance. Yet the Judge considered my action superfluous. What am I supposed to do? It is not that I cannot accept losing the case, but at least I hope the Judge would adjudicate the case. Yet he did not even grant leave for my application for judicial review, which was refused in the first trial as well as the second trial. He just kept on scolding me. Honestly, a person in his right mind will know that if the Judge has written a long judgment to criticize and reprimand me, it means the matter is actually very important. Honestly, a dispute between a Member of the Legislative Council and the President of the Legislative Council in fact comes under our constitutional system. How could the Judge ignore questions like whether the President can guillotine the filibustering, and how can the filibustering be guillotined, but just reprimand me seriously, or even order me to pay the legal costs of the Government? How can I have confidence in him? The Government came to argue the case in court, claiming that the matter had nothing to do with the constitutional system. Yet the Judge said that as the Government had come to argue the case, LEUNG Kwok-hung should also pay its legal costs. If the Judge was really fair, he should be called a friend of the Court. What was the matter with that person?

Honestly, it is very likely that these people will be promoted to the CFA in the future because the said Judge is already a Judge of the CFA, and a "hot shot" as well. But if that Judge is to be nominated as a Judge of the CFA, I will be the first one to rise against the appointment. Do I have the qualification to do so? If the system requires us not to interfere with the Judiciary by all means ..... Honestly, Hong Kong's judicial system has a good reputation only because Judges are prohibited from carrying on any business. Therefore, Judges are rarely corrupted. That is true because the arrangement is intended to prevent Judges from engaging in any business undertakings. In countries worldwide, regardless of their political systems, be it totalitarian or democratic, judges are prohibited from engaging in business undertakings. Therefore, judges are rarely corrupted, right? But the crux is: Although judges are rarely corrupted, they do not necessarily possess an upright character, a wealth of knowledge or a sense of

empathy. The Court is not an ivory tower in the clouds, and it should have a sense of empathy.

Honestly, I have no faith in Hong Kong's rule of law today. I know very well that the Judges have no sense of empathy, wisdom or boldness at all from the way they handled our application for judicial review as well as election petition against LEUNG Chun-ying. Hence, on this point, barrister Dennis KWOK, I am sorry that I cannot agree with your view because I have suffered too much in their hands. I know many people do not agree with me as they think I am doing this to help the Communist Party by discrediting the Judiciary so that the Communist Party can find an excuse to further damage the Judiciary in future. They are wrong if they think so because if a system is sealed and subject to authority, it cannot hold on its own for long, but must have the assistance from others.

Therefore, I hope Honourable colleagues of the pan-democratic camp, particularly Members who are lawyers, can think about this again. While they think they can seal off the Judiciary today, the villains will always make a detour, and the thieves will sneak into the Court through the back door. Therefore, I personally think that as the Legislative Council of Hong Kong is different from the British Parliament, and Hong Kong is not without a constitution, we should indeed safeguard the legislature's power of oversight *vis-à-vis* the Judiciary within the limits of the constitution, so that a system can be developed to facilitate the exercise of power by the fourth estate, that is, public opinion, because a basic platform must be put in place for public opinion to exercise its power of monitoring, and the Legislative Council, as the legislature, is aptly the best platform for intervention of the fourth estate.

Thank you, Deputy President.

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

**MR ALBERT HO** (in Cantonese): Deputy President, I originally did not intend to speak, but having heard Mr LEUNG Kwok-hung present his personal views, I also wish to make some responses.



Deputy President, one of the several Judges whose appointment is proposed today is my university classmate, and I approve greatly of his integrity, knowledge and performance in the judicial sector all these years. I believe the legal sector also supports him very much. Another newly appointed Judge, who is moving up the career ladder, enjoys also great renown in the legal community. Although I am not familiar with the other newly-appointed non-permanent Judges from abroad, I trust they should be similarly well reputed in the judicial and legal sectors.

And yet, as Members may be aware, although all the Judges are very knowledgeable, their characters and values may be different. While the equality of law depends on the merits and demerits of the system, court judgments are subject to the personal views of Judges. The Judges may exercise various powers of discretion, and interpretations of the legal principles are also subject to their personal values. This precisely explains why legal proceedings are necessary. Many people will jokingly say that the results of litigations are always unpredictable, especially when controversial issues of right and wrong are in question. We can hardly foretell the result of lawsuits simply because of the human factor.

I only wish to stress one point. I think that Mr LEUNG Kwok-hung's grave disappointment is probably attributable to his excessively high expectation, hoping that all court judgments would be considered just by all. Actually, the definition of "justice" itself is very controversial. Even if it is a unanimous judgment passed by judges of the highest judicial court, there may not necessarily be justice. This is why very often judges could only say "Judging from the legal viewpoints of the case being heard, I consider in good faith that the judgment is reasonable."

Yet, whether a judgment is just or conforms to society's expectation is another question, and it is very likely that the judgment would be changed by the Legislative Council by way of enactment. Members should know that even the final judgment made by the CFA can be changed by way of enactment. And yet, a restriction is currently imposed on the legislative power as we cannot act beyond the powers conferred upon us by the Basic Law, the "mini-constitution". Since the Hong Kong Bill of Rights Ordinance is also an important statutory safeguard conferred by the Basic Law, therefore no enactment should transcend the Basic Law, which is very clear.

Notwithstanding that, I believe Members do wish the judicial system will be totally independent, the Judges can fearlessly hear cases and the adorable spirit of the rule of law will be upheld. However, we also know that this is only an ideal. How far it can be realized depends on the social environment. We think that Hong Kong is not too bad in this regard, actually quite good when compared with many other places. If you ask me, Hong Kong is at least better than many common law countries. Compared with Singapore, Malaysia and even other countries, I think Hong Kong is definitely better.

And yet, there are a few things that we must note. Firstly, the judicial system must be free from political intervention. I therefore do not agree with Mr LEUNG Kwok-hung's suggestion that the judicial sector should be overseen by the Legislative Council. No countries upholding the rule of law would do so. If we do not agree with the final judgment made by the Court, we can only change it by way of enactment. The Legislative Council should not oversee the behaviour or decisions of individual Judges. As such, the complaint received by Mr WONG Yuk-man recently — it seems that Mr LEUNG Kwok-hung has also received similar complaints — about a person's dissatisfaction with the attitude of a certain Judge towards a case, should not be handled by the Legislative Council. The Rules of Procedure has also prohibited us from making comments on individual cases, especially cases pending trial. Nor should we criticize the integrity of individual Judges. This serves to separate the power of the legislature from that of the Judiciary.

As for the judicial sector, firstly, the judicial sector should have sufficient transparency and this explains the importance of open trial. Open trials may facilitate monitoring by the media, whose reporting may help arouse public concern, thereby involving more educated people with legal knowledge to take part in the discussion and monitoring. Although many renowned Judges are respectable, they might have made certain decisions that were not recognized by the community, and even attracted criticisms from the legal sector. This is possible and it does not mean that people are disrespectful to them.

I therefore opine that the Legislative Council should not directly monitor the Judiciary. The Judiciary should have sufficient transparency and ensure that the Judges can fearlessly make judgments through independent procedures. Also, the salaries of the Judges should not be affected by the Legislative Council's approval of the budget. All these are important factors. The operation of the

entire Judiciary must be based on the excellent tradition of it fearlessly and independently operating in a protected environment as I have just said.

With regard to the complaints against individual Judges, I understand that the judicial sector has established internal procedures to handle complaints and the authorities have also laid down rules to set out the characters required of a Judge. In this connection, I suggest that the judicial sector should enhance the transparency in monitoring judicial officers and its handling of complaints so as to avoid giving people a closed impression. I believe some people will agree with the description "sealed" used by Mr LEUNG Kwok-hung because after handling a complaint, the Judiciary would never give a reasonable account to the person who lodged the complaint. I find this inadequate.

Nonetheless, it is now required that open trials be conducted for all cases, which is better than many countries. Furthermore, there are recordings for all trials. The advantage of the recordings is that in case something happens, we can learn what the Judge has done by listening to the recordings.

Having said all this, I only stress that the system should be treasured. Regarding the behaviour of individual Judges, we should follow the established practice by refraining from intervention and giving our support. Unless there is any special reason, we should respect the recommendations made by the JORC. However, just as Mr Dennis KWOK has said, the status of the Secretary for Justice has made us feel uncomfortable. He is not only a politically appointed official, but also a Member of the Executive Council, bound by the collective responsibility of the Executive Council. No one knows how influential he is in the JORC; whether he can impede the appointment of Judges who merit appointment; impede the extension of term of office of certain Judges who merit an extension; force Judges who have yet to retire into retirement, especially when there is a serious shortage of Judges. There were cases where Judges who did not merit an appointment being appointed. Is there any political consideration? We never know.

Since the appointment process is strictly confidential, no one knows how that particular Executive Council Member who has to observe the collective responsibility principle has exercised his influence in the JORC. This is why Mr Dennis KWOK has reiterated this point on behalf of the legal sector. In fact, I think that not only people from the legal sector, but also Members from the democratic camp share the same view. We feel uncomfortable about the status

of the Secretary for Justice as an Official Member of the Executive Council, and consider that a review is necessary. Other than that, we support this motion today.

Regarding Mr LEUNG Kwok-hung's viewpoint, I certainly have the same feeling when I deal with the litigations. Honestly, Mr LEUNG Kwok-hung and I have all along considered litigations under the judicial system part of the struggle, and thus I have not placed high expectations in many cases. I believe the training and ideology of judges in this world are basically the same, who would initially prefer to maintain the *status quo* and effective governance. These are the basic values which they are trained to hold.

We may come across Judges who adopt an open attitude, and some people even described them as the "Long Hair of the judicial sector". We do have a couple of Judges who will make bold remarks from time to time, but the judicial sector on the whole is relatively conservative. Judicial officers have a very clear bottom line, which is the due process, meaning that the judicial process must be compatible with justice. This is very important.

Secondly, many Judges are very determined to uphold the human rights principle. Hence, if it is the entire system that you are going to attack, for example, demanding the removal of a certain system on the ground that it is illegal, unconstitutional and incompatible with the human rights principle, the chances of you winning the litigation will be very slim. After engaging in proceedings for so many years, I know this very well and would therefore not have high expectations. Changes to the systems must be achieved through political means, and it would not be successful by resorting to legal means alone.

Therefore, in my opinion, Mainland officials need not worry about Hong Kong being led by the Judiciary for this will only show that they do not have a good understanding of Hong Kong's judicial system and human rights laws. Judges only play a passive role of a gatekeeper, so how can they lead the system? This is only possible if a Judge holds that certain provisions in the International Covenant on Economic, Social and Cultural Rights are binding, and guides the formulation of social and economic policies by the Government. But this is not the case. The Court will never consider provisions safeguarding economic, social and cultural rights.

Even if the International Covenant on Civil and Political Rights proves that the Government has made certain mistakes, as in the case of the interception law, and the Court ruled that the Chief Executive's order was illegal and unconstitutional, the judgment concerned would not come into effect at once. The Court would allow some time for the Government to make an enactment again. Therefore, the judicial sector actually attaches great importance to the smooth and orderly operation of the entire system, which is indeed the general value of the sector. We should not expect the Court to make revolutionary judgments to overthrow government decisions. Never have I harboured any wish for this over the years.

I hope that senior Beijing officials would not always think that Hong Kong's judicial sector has obstructed the work of the Government, or impeded the smooth operation or even dampened the efficiency of the Government because of the occasional judicial review victories. This is not the case. Judges have been extremely cautious in hearing cases of judicial review, and the percentage of successful cases is extremely low.

I hope they will not misunderstand that our judicial independence or the so-called "judicial check and balance" will impede government operation, or even go so far as to think that the entire Government will be led by the Judiciary. It not only shows that they have no knowledge about the operation of the entire system, but they are also ignorant.

With these remarks, I support the Chief Secretary's motion.

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

**MR RONNY TONG** (in Cantonese): Deputy President, like Mr Albert HO, I originally did not intend to speak, but Mr LEUNG Kwok-hung's speech is like a stone that has triggered numerous ripples. Now I would like to share with him some feelings from my heart.

Mr LEUNG Kwok-hung is one of the colleagues whom I respect most in this Council because he is quite a fair man and his insistence on social justice is rarely found in ordinary people. Yet, I would like to tell Mr LEUNG that sometimes procedural fairness is equally important. Why? Because social justice is often subjective and conceptual, whereas procedural justice is relatively

more objective. The approval or passage of Judges' appointment by the Legislative Council is an extremely important part of procedural justice. But, this does not mean that the Legislative Council can decide on the political conviction to which the Judges should be inclined. This is definitely not the case. I also agree with Mr Albert HO that if this is the case, I would feel worried.

The appointment of Judges confirmed by the Legislative Council after scrutiny and debate aims to enable members of the public to understand and acknowledge the independence of the Judiciary. Let us imagine that in the absence of this procedure, there might be intimate relations between the Judiciary and the executive too. Hence, Members should not misunderstand the function of the Legislative Council in this procedural justice.

I also wish to point out that I do share Mr LEUNG Kwok-hung's views as contained in his speech. While Mr LEUNG Kwok-hung may probably be involved in litigations in these few years, I have been dealing with them for the past several decades. Looking back at my early years on the Bar, or if I were writing my memoirs, I can tell Mr LEUNG Kwok-hung that the number of cases in which the decisions are, in my opinion, unjust is no less than 40%. The system itself never serves to ensure the administration of justice as social justice is pretty subjective in many cases. What I consider compatible with social justice may not be agreed by my rival.

Therefore, if we accept this system, we must also accept the outcome generated by this system altogether. The greatest merit of this system is its open and fair procedure. Therefore, when we come to the point where we consider the system not so fair, for example, the issue of legal aid to be discussed later on, we have to think about the important question of whether the system is truly fair. Apart from fairness, another important point about this system is its open procedure. We must understand that while social justice is important, it would be equally or even more important for social justice to be seen by all. Therefore, we cannot neglect the fact that both the procedures and the outcomes are important.

The third point that I wish to discuss is what makes a good judge. I do not necessarily think that a very smart and brilliant barrister definitely a good judge. From my personal experience in Hong Kong, the United Kingdom or the United States, the cleverer and smarter a judge is, the lower the chance he would make a

good judge. Why? Since many Members present at the meeting are lawyers, they probably know that a lawyer may have to spend one, or even two or three years on a single case. The lengthiest case that I have ever dealt with lasted for more than a decade, but how much time would a judge spend on each case? Only one or two days, or one or two hours, or at most one or two months. Regarding the familiarity with the case, the judge is never as good as the lawyers concerned. And the smarter or cleverer a judge is, the higher the chance that he would think he has a good understanding of the case and therefore does not need any further information from the lawyers concerned, which is extremely dangerous. It is precisely because the judge thought that he has fully understood the case and could make correct decisions compatible with social justice that makes the situation so dangerous. In fact, a good judge only needs to have one special character, and that is, the readiness to listen. This also applies to public officials because it does not matter if a person is not smart, but it is very important for him to be ready to listen.

Of the several Judges whose appointment is being discussed today, the one I know may not be the smartest, but at least he is ready to listen. This is particularly important to Judges of the CFA, whose judgments may determine the development or even change the laws. If a judge does not possess the character of being ready to listen, he will be prone to get into a dead end. Therefore, our only requirement of a judge is not whether he is politically correct or smart, but whether he is ready to listen.

Today's resolution involves a number of Judges. Although I do not know all of them, I think they meet the requirements. At least, I would remind myself that this is not a process to criticize the Judges, or to test their abilities in order to pass recognition. Rather, it aims to demonstrate judicial independence to Hong Kong people from this process. As to whether all cases can achieve results compatible with social justice, I can tell Mr LEUNG Kwok-hung that this is really wishful thinking because the basic instincts of human beings are often subjective. We therefore cannot expect that in the course of a basically subjective decision-making process, all judgments made are up to the social justice standard that we uphold. So long as the system is fair and open, and the process is acceptable to all, we would have to accept the final outcome.

Deputy President, I think I should stop here. I only hope that Mr LEUNG Kwok-hung will see my point and Members will understand that our endorsement

of this resolution today is not based on any political reason, but only to play a role in procedural justice. Thank you, Deputy President.

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

**MR PAUL TSE** (in Cantonese): Deputy President, it appears the ripples triggered by the stone have not stopped yet. I wish to take this opportunity, as I do not know when I will have another opportunity, to share some of my views concerning the judicial appointments. In particular, just now some colleagues have made their speeches impromptu and these speeches are usually more sincere and may be more worth listening to, which is better than just reading from scripts.

Deputy President, I wish to respond to a few points. First, I agree to what Mr Ronny TONG has said and I also respect Mr LEUNG Kwok-hung very much. There is no derogatory sense in what I am going to say. As the saying goes, "The lower class have more sense of justice." There is certain truth and wisdom in it. When a person has not much to lose, no matter it is personal assets or social status, he is more likely to speak out boldly in the name of justice. However, unfortunately, for some members of the legal profession, be they solicitors or barristers, who are already enjoying a good reputation and success and if they are holding certain honourary positions or they are rather wealthy, when they file a lawsuit in their own name, they would very often worry that once they lose, under the present system, they will have to bear the legal costs of the other party. This system is of course not practised all over the world but in most countries that practise common law. As a result, many are unwilling or do not dare to file a lawsuit out of this fear.

Insofar as Mr LEUNG Kwok-hung is concerned, I guess he is in a better position in this respect as he can choose to file a lawsuit anytime without worrying about the consequences. Of course he might worry that once he is broke, his membership in this Council will be affected but apart from that, relatively speaking, money is not a big concern for him. In this respect, I hope that other colleagues who are better off in terms of their assets, or who "dare to" prove that I am wrong — Since more often than not, it seems that people dare not speak out against policies and court judgments that they are very dissatisfied with and they are unwilling to use their money or give up their own interests to take a



chance. In this respect, perhaps I am in the middle because I am not absolutely penniless or have no professional qualifications but at the same time I consider myself not too worried or too scared of the consequences of losing a lawsuit. Therefore, I also have some track records that made me look insane in the minds of members of my profession as they thought that I was wasting my time and money and risking everything to fight with some people whom I should not fight.

Deputy President, I am afraid that I have to concur with Mr Ronny TONG again regarding the quality of judges. For the most outstanding judges, whom we consider as having high IQ, they do have their strengths. That is to say, they may be far wiser than the average people. However, I also agree that there are more important qualities, including the listening and inter-personal skills, and also the "EQ" that we usually talk about, or what the legal profession calls the "judicial temperament". As judicial officers, whether they have these characters or qualities may matter even more.

As a matter of fact, although I do not have so much experience as a lawyer as Mr Ronny TONG, as I am fortunate enough to have engaged in the profession of a barrister and a solicitor, I am able to look at this matter from various perspectives. In fact, I have found that many very bright Judges or those who claim to be very bright are very often not the Judges whom we are most eager to see, nor are they the people from whom we can more likely find the truth or justice. That is because they will form a subjective decision very early on and give no regard to the barristers and solicitors whom they consider to have lower IQ than theirs. With such an attitude, they have no interest whatsoever in listening to other people. However, just like the issue we always face in this Council, which is, we request government officials to always listen. As the Chinese saying goes, "Three cobblers with their wits combined equal ZHUGE Liang the master mind", meaning that two heads are better than one, and this saying in fact contains some grain of truth.

Deputy President, the second point I wish to respond to Mr Ronny TONG's remark is that he thinks that there is less than 40% chance that true justice is done. I wonder if I can be so optimistic as him because now many people say that they can find justice in the Court. But I am afraid they have gone to the wrong place, as the Court is more about reasoning than finding the truth. I believe the client is clearer about the truth and he does not need the lawyer to argue the case for him, but he needs the help of a solicitor or barrister in respect

of reasoning, packaging and strategies. If truth can be found in the Court every time, I believe as long as one believes that one is innocent and the truth is on his side or believes that he is right, he can argue the case in court by himself. However, why is it that very often we cannot argue the case by ourselves? Because justice cannot always be upheld.

I say this not because I am overly pessimistic; rather that is because I understand that in reality, like the examination system, before it can be replaced by a better system, it is the only system which is relatively objective and fair. By the same token, in the absence of a better way, while we cannot always rely on the "heaven's eyes" to watch what has happened among us, I am afraid the judicial system is the only reliable system that is relatively systematic, objective or just after more than a century's development.

However, Deputy President, I would like to respond to Mr Albert HO regarding his point that we can feel at ease without worrying that the Judges of the CFA or any Judges would have a significant impact on our values. Concerning this point, I beg to differ. In fact, it is possible that judgments made by a court, especially those at higher levels, can gradually and progressively change the values and preferences of society in the absence of public debates and discussion and even without anyone paying attention to or knowing it.

Of course, in some more controversial cases, such as the case of W earlier, the values of the Court override the values of the entire society. The judgment of the Court, which is made by several judges only, whether unanimously or by a majority of them, will change the values of the whole society. If the values are formed through the process of legislation, debate, discussion and consultation, the result may not be the same. However, at the time when a judgment is made, the Judges always think that their judgment is right. Of course, we do not always invoke a law purely from the legal point of view but rather the interpretation of a law very often reflects the prevailing values of society, in which it includes many judgments. Or let us put it this way: for the many case laws established in the past, whenever a new landmark decision, or a significant and crucial judgment is made, very often they form new values, new rationales for reference or new direction of development of law.

Allow me to change the direction slightly and talk about my experience. A few months ago, because there were some allegations made in the community or by the media, Mr LEUNG Chun-ying, the Chief Executive, issued a lawyer's

letter to a scholar and journalist warning him that he might face the consequence similar to being sued for defamation; and once again the issue about the legal protection of the media against accusation of defamation was highlighted. From what angle should it be looked at, how could it be tested and how big is the scope of protection?

Fortunately or unfortunately, I have also been involved in a case of this nature and I was the one who started it. I was the plaintiff and like Mr LEUNG Kwok-hung, my sole aim was to seek justice and teach the villain a lesson; so I initiated the litigation without any concern about the costs. However, in accordance with the case law of that time or what had been in place for over 150 years, it was like playing football, the goal was already there and you had to score through whatever tricks you could come up with.

However, as the case was tried in the CFA, a Judge from the United Kingdom predominantly thought that it was high time that our law was changed and the restriction on the so-called defamation relaxed. Perhaps I should explain it more in detail. In the past, if you were accused of defamation, one of the grounds of defence was that either the facts had to be proven or fair comments were also based on facts. However, in respect of using fair comments as the grounds of defence, according to the over 100-year-old case law, the more frequent the common law countries that use this kind of precedents, the more they consider that if there has been "a history" or feud between the plaintiff and the defendant, the defendant cannot avenge a personal wrong in the name of public interest, making a seemingly fair comment but actually using the airwaves or articles to avenge the plaintiff. Therefore, the principle is if there have been private feuds, "a history" or rows between the two, the defendant cannot rightly claim that he is just a commentator making the comments.

Since this goal was set over a century ago, we would naturally shoot the ball towards this goal. After you have scored, just like my case, and the decision has been made based on this principle and decided unanimously by the seven jurors as a legitimate score, and the Court of Appeal has held that the score is in order legally and the decision of the jurors has been made in accordance with legal principles, but when the case is brought to the CFA, the Judge, that is the aforementioned one from the United Kingdom, opined that the law should be relaxed according to his values and that in future as long as all workers in the media honestly believe that their thoughts had grounds, or their comments were true or reasonable, then the Courts need not consider that they have had "history".

What are the consequences? The consequences are because the goal has been relocated, if the ball is shot into the goal, it cannot be ruled as a score. Maybe I can cite a more commonly used example. It is like playing a game of mahjong, the "thirteen orphans" has always been considered a peculiar arrangement which can claim the win. But suddenly someone says, "No, the 'thirteen orphans' should not be considered the right arrangement. How can it be considered a peculiar arrangement? It cannot be claimed a win. Let us play this round again. If you have won the money, pay it back." It is something like that.

It shows that sometimes a judge's judgment made on the basis of his values will not only have significant impact on the litigants of the case, it may also affect the common law system because other countries that made judgments with reference to the case law may also make reference to similar cases like this. This is only a simple example but to the defendant who would have lost but ends up winning — as far as I understand it, particularly to a litigant who has almost given up, thinking that he would definitely lose but he is only pushing his luck, and has even made arrangements for handling his assets and what follows would not be of too much risk to him, this is wonderful news. However, to the plaintiff, this could mean that he would lose all his assets. I thank the heavens that I am fortunate enough to be able to still stand here today as many of my clients have lost all their assets, some even suffered a nervous breakdown and lost their mind after encountering such a situation. As a matter of fact, there has been a case in which a client whom I know well went insane as a result of the judgment handed out by the CFA. The case in question was not in this category. But owing to the case law invoked, white was turned into black or A was turned into B, giving rise to many undesirable consequences.

Deputy President, hence I cannot agree to Mr Albert HO's remark that judges will not significantly change many of our values as the fact is on the contrary. In fact, other countries and judicial systems have been pondering upon this issue. Should we allow the Judges of the CFA to have too much legislative power without realizing it or do we feel that it does not really matter?

Back to the motion, I just heard Mr LEUNG Kwok-hung talk about his experience and something he had learnt and I felt that I do share his feelings. In fact, judges are human too, and owing to their different backgrounds, different education levels and processes, different professional ladders, exposure to

different ethnic groups, or different personal experiences, different judges have different points of view. Members may not be very familiar with the Judges, but Members should be more familiar with Mr Martin LEE, a former Legislative Council Member, or Mr Andrew LIAO Cheung-sing, my mentor, a former Member of the Executive Council, who both belong to this profession, and Honourable colleagues may more or less know their values and viewpoints on certain matters. If I asked Mr Andrew LIAO to be the presiding judge of a case, his judgment of the case would be different from that of Mr Martin LEE, if he was the presiding judge instead. In the face of the same case, I believe their judgments would not be based on the facts alone but they would also involve their values, and their attitudes towards certain major principles would also be different.

Therefore, that is why I consider that there is a problem with Article 82 of the Basic Law because we give the Chief Justice of the CFA an enormous power, that is, to decide which judge from a foreign country should be invited to sit on the CFA to try a certain case. As a matter of fact, should a foreign judge be invited in every case? This is of course a very controversial question, and of course our present practice is to invite one in each case. As I said just now, different Judges with different backgrounds and different values will bring about different results.

I certainly support today's motion, but I think that this matter warrants our reflection.

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

**MR WONG YUK-MAN** (in Cantonese): Deputy President, this resolution is presented to the Legislative Council as a matter of formality, right? Hence, many Members have taken this opportunity to talk about other matters. I would also do the same.

As we all know, people in Hong Kong are always talking about the so-called core values. Lately, I was invited to give a talk in a secondary school, and the teacher teaching the subject of Liberal Studies asked me to talk about five core values. He mentioned three of them, but there were in fact five. But

because of the time constraint, I could only talk about three of them. Of the five core values in his opinion as he relayed to me, the first one is clean politics, that is, a clean and effective executive system; the second one is free speech; and the third one is an independent Judiciary. I think nobody will dispute the point that independence of the Judiciary is a very important core value in Hong Kong — people always use this term, and not the term "universal values"; they tend to use the term "core values" — but why? Hong Kong is one of the few common law jurisdictions where Chinese can be used in court proceedings, yet the result is hardly satisfactory.

Our judicial system now faces a problem, that is, it is being undermined. Of course, the precedent just cited by Mr Paul TSE is really his own case, right? But even though he was talking about his own case, it does not mean that it does not hold true objectively. In fact, the current judicial system is flawed, but many friends in the pro-democratic camp have over-indulged themselves in the myth about the so-called judicial system now. Everyone considers that a judge will make no mistake, and all Judges of the High Court, the Court of Appeal or the Court of Final Appeal (CFA) are saints who make no mistakes. Buddy, they are just human beings like ourselves with different emotions and desires, right? When they make judgments themselves, they may also make mistakes. Our concern is that while it is not important ..... Human beings can do evil. From the perspective of Christianity, all human beings have sinned, and it also applies to judges, right?

Hence, we must assume that all human beings are sinful by nature and they also make mistakes. We must therefore rely on institutions and systems to regulate them. Actually, that was why the United States Constitution was made back then ..... Buddy, at that time, there were only 13 states in North American, yet arguments went on for months because they had different ideas. Finally, only one standard was adopted, that is, "In God we trust", simple as that. Later on, various amendments were made gradually. Even constitution stalwarts like Benjamin FRANKLIN also admitted that the Constitution was far from perfect, and as he grew older, he became increasingly obstinate and refused to listen to others, while always staying cautious and apprehensive. Hence, some amendments have been made to the United States Constitution over the years to bring it in line with public opinions and the times.

Today, people are always talking about acting in accordance with the Basic Law. Hong Kong still maintains an independent Judiciary while practising the

common law. Nonetheless, this system is inherently deficient. The Basic Law, or the so-called mini constitution, is formulated not by Hong Kong people, but the Communist Party through a drafting committee appointed by the Standing Committee of the National People's Congress (NPCSC). Hong Kong members only accounted for a minority in the composition of this drafting committee. Hence, at that time, we must even argue about with whom the power of interpretation of the law under Article 158 should be vested. As barristers, they should know very well that under common law, the legislature is only responsible for making laws, while the Court is responsible for the interpretation of laws. This practice is even adopted in Taiwan where the power of interpretation of its Constitution is vested in the Grand Justices Council of the Constitutional Court, that is, the Court is responsible for the interpretation of the Constitutional. However, the power of interpretation of the law is vested in the NPCSC. The Communist Party of China (CPC) rules by a one-party totalitarian and authoritarian regime. As members of the NPCSC are directly controlled by the CPC, if they hold the power of interpretation of the law, the system is inherently deficient.

Moreover, the system is also plagued by acquired shortcomings, that is, the rotten nature of human beings which I just mentioned, and it has started to crumble. Not to mention the junior courts, even for the Magistrates' Courts, many Magistrates came from the Department of Justice (DoJ), and they also want to get promotion, right? Let us see. The conviction rate of the Magistrates' Courts is over 90%, whereas the conviction rate of courts of the same level in countries and places practising common law around the world is only about 70%. But the rate is as high as over 90% in Hong Kong. Moreover, the conviction rate of people arrested and charged with the offence of unlawful assembly is 100%.

According to the Court, its duty is merely to administer the law or to adjudicate after hearing the representations by both the prosecution and the defence, so that the Court can make a so-called impartial decision. However, this system itself can actually give rise to partial judgments. Chief Secretary, in most cases, petty citizens must bear exorbitant legal costs because the litigation process is very complicated. Recently, there is a proposal to revamp the legal aid system by setting up an independent Legal Aid Services Council. But the Government is unwilling to do so because it wants to exercise full control. Insofar as this system is concerned, is the Judiciary completely independent? Besides administrative problems, the Judiciary is also affected by politics. That is why the "acquired shortcomings" which I mentioned also cover the present

executive system in addition to the human factor. The Chief Secretary is troubled by a headache now because she must figure out how to address the problem with "1 July". If many people demand this year that her boss should step down, and the situation is worse than TUNG Chee-hwa's case back then, what should she do? What can she do except to stay on with effrontery? She can only say that the Government has heard the views of the people, and then the latter insists on going its own way.

Now, even the judicial system has run into troubles. Why do most Magistrates have to have a DoJ background? I do not wish to mention my own lawsuit. I do not like to talk about my own case. Just now, "Long Hair" also criticized the Magistrates harshly. I wish to tell Members that basically, most of them have a very low standard, and I am speaking from experience. I am just reading the blueprint of my book entitled 《我在法庭的自辯》 (meaning literally "My self-defence in court"), with almost 400 pages. I will publish the book on "1 July". I am sure the 3 000 copies will be sold out. We must rely on our own limited legal knowledge to argue our case in court and counter the draconian law. Not only must we counter the draconian law in the form of the Public Order Ordinance, but also the Court which will most likely become a venue of political trials — we must wage a judicial war. Sure, we can lodge an appeal, everyone knows about that, but where does the money come from? When lodging an appeal, people like us cannot get legal aid.

Recently, I wanted to apply to the Court for some verbatim transcripts. It turned out that the cost amounted to hundreds of thousands of dollars. Comparing this payment of hundreds of thousands of dollars and my present sentence of six weeks in jail, suspended for 14 months, I might as well close my eyes and stay put in these 14 months. But it is not what we must do. We must pursue our case in court for the sake of defending independence of the Judiciary in Hong Kong as well as the dignity of the judicial system. Chief Secretary, people like us have a certain "fame", so to speak, and some power, but petty citizens can do nothing but accept it, albeit most unwillingly. Eventually, it will result in grievances.

Nobody is allowed to chide Judges in court; then let me not meet them on the street — that is the reaction of petty citizens. They know that people get sentenced to jail for "sending regards to the mother of the Judge" in court because the Judge is superior. But is it certain that Judges make no mistakes? Recently, we raised a question at a meeting of the Panel on Administration of Justice and Legal Services because "Long Hair" and I had received a complaint



case which we both considered to be very serious because all evidence showed that the Judge in question was at fault. If a Judge made mistakes in the procedure, who is responsible for sanctioning him? Deputy President, Chief Secretary, who has the power to sanction Judges? Nobody. Who could sanction the Judges of the CFA or the Court of Appeal if they made mistakes? Can you tell me which system can sanction Judges who made mistakes? God — that is the answer from Mr LEUNG Kwok-hung.

Members should consider what sanction systems can be used. Can we rely on public opinion? Public opinion is the fourth estate. But public opinion in Hong Kong cannot perform the functions of the fourth estate because it is also very corrupted, particularly the so-called major democratic newspapers which are all basically dog shit and rubbish. These newspapers are experts in slander and libel ..... Mr Paul TSE, if "Fatty LAI" defames you, what can you do? Because that is his honest belief. Why can newspapers not chide or criticize public figures? They can even fabricate their own stories. The fourth estate has already been rotten through and through. Who can we rely on to monitor the Judiciary?

Moreover, some Members are really very funny, particularly those from the legal sector who always talk about independence of the Judiciary, not interfering with the legislature, separation of powers, and so on. However, there must be a limit. That is not how separation of powers should be interpreted. We must respect the system of judicial independence, as a matter of course. Just now, barrister Ronny TONG mentioned the quality of being open and fair, or should it be impartial, fair and open? He only used the two adjectives of "fair" and "open", is that right? Did he mention impartiality? Where should impartiality fit in? The subject under discussion today is the appointment of a Permanent Judge and non-permanent Judges of the CFA. Honestly, although the power of consent is vested in the legislature from an institutional point of view, this power is basically defunct because those Judges need not come before the Legislative Council to answer Members' questions.

Unlike in the United States where in the appointment of Justices of the Supreme Court, the nominee must appear before the Senate to answer questions from Senators, and undergo many complicated procedures before formal acceptance of appointment. But we need not do the same thing. We just exercise the power of consent as a matter of formality. Generally speaking, consent will not be withheld. Hence, we must thank the likes of Mr Paul TSE,

Mr LEUNG Kwok-hung and Mr WONG Yuk-man for engaging in seemingly irrelevancies on this occasion before finally stating their stance of supporting this resolution or otherwise. But our digression has raised many wider issues, with the bane in the system itself. That is why I just said the system is inherently deficient.

The inherent deficiency arises because the power of interpretation of the Basic Law is not vested in Hong Kong — the CFA of Hong Kong; instead, it is vested in the legislature — but not the legislature of Hong Kong. That is the fatal blow. Is that not an inherent deficiency? Members talked about maintaining independence of the Judiciary and the rule of law in Hong Kong, with Hong Kong remaining as a common law jurisdiction, yet continental law is practiced by the NPCSC, and we are a common law jurisdiction. The legislature of a continental law jurisdiction is responsible for interpreting common law, is that not very ridiculous? However, it is accepted by everybody and nobody dares challenge it. That is the crux. That is the inherent deficiency. Then, the acquired shortcomings set in.

Somebody said to me, "'Yuk-man', if all foreign judges should leave Hong Kong, it would be 'game over' for Hong Kong." I replied, "Such a xenophilia mentality will have disastrous consequences." Nonetheless, this mentality is not unfounded. Deputy President, why do people hold such an obsession about foreign judges? Were mistakes made by the incumbent Chief Justice of the CFA, Geoffrey MA? The answer is "Yes". I am referring to the case of Andrew LAM — I had visited Andrew LAM in prison; his case is really an injustice, and it is also an injustice that I had to visit him in prison because I should not have to do so in the first place, and we could have had a drink or two outside just as we normally do — would Members say mistakes were made by the Judge? Hence, the final conclusion is still that the system is at fault.

I do not understand why Hong Kong people still have confidence in the system. Now, it is not Hong Kong people who have the confidence, but just some barristers, or perhaps those barristers who could become judges one day have even greater confidence. I do not know if my remarks are agreeable or not. It was just a casual remark, so please do not "turn hostile". Do Members honestly believe that an independent judicial system is eternal and rock-solid? Members need only answer one question of mine ..... So long as the CPC's one-party dictatorship continues, the power of interpretation of the law will

remain in the hands of the CPC; in that case, nothing further can be done. Coupled with the fact I just mentioned about human beings being weak, if money and women cannot make a person bend, there must be something else that does; there is always something to make a person bend. Hence, at the end of the day, people can only put their trust in the system.

Regarding the United States I just mentioned, the overall spirit of the laws or the codes and regulations of the United States is the distrust of human beings, that is, the system was designed out of distrust of human beings. That is why it can last forever and bring about long-term stability and good order. But when the United States interferes with other countries, it is a totally different story. As we can see, it is now messing with Hong Kong as well as other countries, which is another question. But for the United States itself, the premise of building a system for long-term stability and good order is the distrust of human beings. As human beings are not trustworthy, we can only rely on the system. What we need to defend is the system. We must defend this system and hope that it will not be subject to the interference of politics or any human factors.

What is there to fairness nowadays? Sometimes, I cannot help but feel furious about certain things. "Here is one who steals a hook (for his girdle) — he is put to death for it: here is another who steals a state — he becomes its prince." — that is the situation of Hong Kong now for the grievously greedy, like "covetous TSANG", will be spared while a person who picks up a one-dollar coin in the street and puts it in his trouser pocket will be put behind bars (*The buzzer sounded*) ..... What has become of this world?

**DEPUTY PRESIDENT** (in Cantonese): Mr WONG, your speaking time is up. Does any other Member wish to speak?

(No Member indicated a wish to speak)

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

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Deputy President, I am very grateful to the Subcommittee on Proposed Senior Judicial Appointments (the Subcommittee), under the chairmanship of Mr Dennis KWOK, for its support for the proposed appointments. I would like to thank Mr KWOK again for pointing out the mistake I made in my speech just now when I referred to the term of Mr Justice Joseph Paul FOK's appointment. Here, I would like to apologize to the Legislative Council as well as Mr Justice Joseph Paul FOK.

Of the seven Honourable Members who have spoken, many, and of course including those from the legal sector, have stressed the importance of independence of the Judiciary in Hong Kong. I totally agree with this point. In fact, judicial independence is exactly the cornerstone of Hong Kong's successful implementation of "one country, two systems", and one of the greatest advantages enjoyed by Hong Kong. Hence, our discussion today on the proposed judicial appointments should be subject to neither political nor executive interference.

Deputy President, I now wish to make a simple response to three points raised by several Honourable Members, namely, the role of the Secretary for Justice in the Judicial Officers Recommendation Commission (JORC), the transparency of judicial appointments, as well as the mechanism for handling complaints against judicial officers.

Some consider that the membership of the Secretary for Justice in the JORC would undermine its independence. The Administration does not agree with this view. As a matter of fact, the Secretary for Justice is only one of the nine members of the JORC, and he does not have veto power in the JORC. Besides, his status of political appointment does not prevent him from being able to freely and without fear or favour, affection or ill-will, give his counsel and advice to the Chief Executive in connexion with all such matters as may be referred to the JORC under the JORC Ordinance, in accordance with the oath taken by him on appointment as a member of the JORC.

There is nothing in the political appointment system which would undermine the principle of exercising judicial power independently by the Courts of the Hong Kong Special Administrative Region (SAR) as entrenched in

Article 85 of the Basic Law, or the integrity of the judicial appointment process provided for in the Basic Law.

I would also like to point out that the Secretary for Justice performs the role of guardian of the public interest in the administration of justice and upholder of the rule of law, and he is also the principal adviser on legal matters to the Chief Executive. Hence, it is appropriate for the Secretary for Justice to be involved, as a member of the JORC, in making recommendation to the Chief Executive on judicial appointments.

Besides, as the head of the Department of Justice, which employs a large number of lawyers and briefs out a great deal of work to the private sector, the Secretary for Justice is in a unique position and has considerable knowledge to contribute to the JORC's deliberations in respect of judicial appointments. Therefore, the Administration is of the view that the ex-officio membership of the Secretary for Justice in the JORC should continue.

Regarding the view that the transparency of the JORC's deliberations in respect of judicial appointments should be improved, the Secretary to the JORC (that is, the Judiciary Administrator) has already advised at the meeting of the Subcommittee held on 23 April that the JORC made recommendations on judicial appointments in accordance with Article 92 of the Basic Law. Deliberations of the JORC were strictly confidential and it would not be appropriate to disclose further details.

Similarly, regarding the mechanism for handling complaints against Judges, the Judiciary Administrator has previously pointed out that all complaints against judicial conduct are handled by the Chief Justice or the relevant Court Leader. The Judiciary has prepared a leaflet on the relevant mechanism, which is made available on the website of the Judiciary, as well as on all premises of the Judiciary for public information. Regarding complaints against judicial decisions made by Judges, the complainants will be advised that anyone who disagrees with a Judge's decision can only pursue his case through appropriate appeal procedures under the existing legal system.

Deputy President, Mr Justice Joseph Paul FOK, Mr Justice Patrick CHAN Siu-oi, Mr James SPIGELMAN and Mr William GUMMOW are all outstanding Judges, and their appointments will contribute to the Hong Kong Court of Final Appeal in continuing to perform its important role in upholding the rule of law. I trust all Judges will act with impartiality and uphold judicial independence in Hong Kong.

I implore Members to endorse the relevant appointments. Thank you, Deputy President.

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

(Members raised their hands)

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

(No hands raised)

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

**DEPUTY PRESIDENT** (in Cantonese): Proposed resolution under the Legal Aid Ordinance.

Members who wish to speak on the motion will please press the "Request to speak" button.

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

**PROPOSED RESOLUTION UNDER THE LEGAL AID ORDINANCE**

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Deputy President, I move that the resolution standing in my name be passed.

In accordance with sections 5 and 5A of the Legal Aid Ordinance, a person whose disposable financial resources do not exceed \$260,000 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS). The corresponding limit for the Supplementary Legal Aid Scheme (SLAS) is \$1,300,000. The above-mentioned limit for OLAS also applies to criminal legal aid. The Administration reviews the limits annually to take into account movement in consumer prices, so as to maintain the real value of the limits.

We have recently completed the 2012 annual review. The increase in Consumer Price Index (C) between July 2011 and July 2012 is 3.7%. We now propose the Resolution to adjust upward the limit for OLAS from \$260,000 to \$269,620, and from \$1,300,000 to \$1,348,100 for SLAS.

A Legislative Council Subcommittee was formed earlier and has completed scrutiny of the resolution. We note that members of the Subcommittee are concerned with the progress of the Administration's comprehensive reviews on the financial eligibility limits and coverage of OLAS and SLAS. The Home Affairs Bureau and the Legal Aid Department have commenced preparatory work for the review, and we will inform the Panel on Administration of Justice and Legal Services of the Legislative Council on the progress of the reviews in the 2013-2014 Legislative Session.

(THE PRESIDENT resumed the Chair)

I would like to extend my appreciation to Mr Albert HO, Chairman of the Subcommittee, and other Subcommittee members for the efforts made and valuable comments provided in scrutinizing the Resolution, which facilitated the smooth completion of the Subcommittee's work. Subject to the passage of the Resolution, the Resolution will be gazetted and commence operation on 28 June. I implore Members to support this motion. Thank you, President.

**The Secretary for Home Affairs moved the following motion:**

"RESOLVED that the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule.

### **Schedule**

#### **Amendments to Legal Aid Ordinance**

1. **Section 5 amended (persons eligible for legal aid)**

Section 5(1) —

**Repeal**

"\$260,000"

**Substitute**

"\$269,620".

2. **Section 5A amended (supplementary legal aid)**

Section 5A(b) —

(a) **Repeal**

"\$260,000"

**Substitute**

"\$269,620";

(b) **Repeal**

"\$1,300,000"

**Substitute**

"\$1,348,100".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Resolution moved by the Secretary for Home Affairs be passed.

**MR ALBERT HO** (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) (the Subcommittee), I report on the deliberations of the Subcommittee.



The proposed Resolution under section 7(a) of the Ordinance seeks to amend the financial eligibility limits (FELs) for the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) for the granting of legal aid in civil actions to reflect the result of the 2012 annual review. The FEL for OLAS also applies to criminal legal aid.

The Subcommittee has no opposition to the Administration's proposal to increase the FEL for OLAS from \$260,000 to \$269,620 and the FEL for SLAS from \$1,300,000 to \$1,348,100; but, the concerns and views of the Subcommittee are as follows.

The Subcommittee noted that it is the practice of the Administration to conduct a review of the FELs of legal aid applicants biennially to take into account changes in litigation costs and a review of the criteria used to assess the FELs of legal aid applicants every five years.

According to the Administration, preparatory work for the biennial and five-yearly reviews has commenced, and it plans to report to the Panel on Administration of Justice and Legal Services (the Panel) progress of these two reviews in the 2013-2014 Legislative Session.

Question was raised as to when the Administration would be in a position to report to the Panel on its review of the expansion of the scope of SLAS to cover more types of cases, following the injection of \$100 million by the Government into the Supplementary Legal Aid Fund (SLAF) in December 2012.

The Administration has remarked that more time is needed to assess the impact of the expansion of the scope of SLAS on the financial viability of SLAF and the operational experience. The Administration would consult the Legal Aid Services Council (LASC) on whether the scope of SLAS should be further expanded before reporting to the Panel in the next Legislative Session.

On the suggestion of expanding the scope of OLAS to cover defamatory libel cases, the Administration has agreed to convey such to the LASC for consideration.

President, the salient points of the report of the Subcommittee have been presented above and I will now briefly restate some points. First, two important

reviews will be conducted next year, and one of them is a biennial review to take into account changes in litigation costs and review the FELs, which is different from the inflation-related review this year. This is a more important point because the changes in litigation costs may differ from the general changes in prices. Therefore, it is important for the review to be conducted biennially. Another review mentioned is a regular five-yearly review of the FELs.

When these two important reviews are submitted to the Panel next year, there will be a comprehensive scope to facilitate deeper and more comprehensive reviews, as in the discussions in the past, which can also be expanded. I wish to emphasize that the Hong Kong Bar Association and The Law Society of Hong Kong have submitted a lot of opinions. In fact, we do not just wish to expand the scope of SLAS because SLAS will take into account the Administration's financial situation and whether the existing funds are sufficient for operation, without the need to inject new funds. However, OLAS is more important because the Government needs not consider its financial situation and whether the existing funds are sufficient to maintain operation, and OLAS also involves fundamental rights.

At that time, we suggested expanding the scope of OLAS to cover defamatory libel cases because we found that, if a defendant was oppressed by the legal proceedings — we used the word "oppressed" because we noticed that many consortia, including media organizations and large management companies could oppress people through defamatory libel cases. Even in the course of organizing owners' corporations, many people who criticized the management companies and developers were put under pressure because of defamatory libel cases. Even if we expanded the scope of OLAS to cover defamatory libel cases, we will certainly examine the details of the cases, and the defendants will only be granted legal aid if they have good grounds of defence. Similarly, the plaintiffs in defamatory libel cases should have good and reasonable chances of winning in order to get support. That is why I consider this a right. I hope the Administration will carefully consider the inclusion of such cases into the scope of SLAS and also OLAS. We have repeatedly discussed this issue before.

We have also noticed that, some people made election petitions after elections, but this is excluded under the existing Legal Aid Ordinance. We all know that standing as a candidate is a right. When people stood as candidates in elections according to the law but discovered problems or unfairness in the election process, they should resolve these issues through legal channels, to do

justice to those parties concerned. Similarly, if it is found after examining the details of a case that the candidate concerned should have had a fair election and the results should be judicially reviewed, I do not understand why the election petition should be excluded from the scope of legal aid.

There are other cases apart from the two cases above, and I think that it is unnecessary to fully exclude these cases, such as commercial disputes, from the scope of legal aid as concluded before. I believe litigation is a right and judicial justice can be sought where necessary. If a person has the legal right to seek justice in court, but he does not have enough money because another party is a stronger individual or enterprise who oppresses him through a huge team of lawyers, such that the two parties are not in equal positions in the legal proceedings, how can there be judicial justice?

Of course, all legal aid applications should not be blindly approved. That is not our request. Our request is that, first, there must be a financial review. We consider that the existing FEL is rather low, so we wish that a comprehensive review would be conducted next year. In addition to the two reviews just mentioned, a comprehensive review will also be conducted next year. Second, the details of the cases must be examined. It is not easy to pass such examinations; if the applicants have reasonable chances of winning, why can we not give them the right of judicial appeal?

Lastly, I wish to stress that the legal aid system seeks to ensure that everybody can seek judicial justice through proceedings under the judicial system, and this is a fundamental right. Without such a system, an important pillar of the rule of law will be missing. In addition to having such a system, we must ensure the impartial operation of the system, and that many of the operating conditions must also be fair, impartial and open. Finally, I would like to propose again that the legal aid system should eventually become fully independent of the Government. Over the years, the Legislative Council has passed motions at least twice, requesting the Government to agree to legislate to allow the legal aid system to become completely independent. I hope that these important issues can also be discussed next year when a comprehensive review is conducted.

With these remarks, I hope Members will support the motion today.

**MR LEE CHEUK-YAN** (in Cantonese): President, I am sure none of us will oppose the increase in the financial eligibility limits (FELs) of the Legal Aid Department (LAD), but the problem is whether the increase will be useful or not. Hong Kong people love to say that the poor should not fight with the rich, which is especially true when it comes to legal proceedings. How can the poor struggle against the rich because the lawyers' charges frequently amount to tens of million and even hundreds of million dollars? For this reason, legal aid is extremely important for it enables the poor to seek judicial justice. It would be better if people are in abject poverty, but it is most miserable if they are moderately poor. The largest number of Hong Kong people is now moderately poor. The FELs were increased from some \$170,000 to \$260,000, and they are now further increased from \$260,000 to some \$269,000. This is purely an inflation-related adjustment which will certainly have limited effects.

I learnt about an astonishing number yesterday. When the Panel on Administration of Justice and Legal Services (the Panel) of the Legislative Council discussed the independence of the LAD yesterday, the representative of the Hong Kong Bar Association presented a number about the substantial adjustment of the FELs. According to him, even if the FELs were increased from some \$170,000 to some \$260,000, there would only be 0.13% additional cases. Are there many other cases and marginalized people who cannot get legal aid, continue to be suppressed by the rich and fail to seek judicial justice? If there will only be a few additional legal aid cases when the FELs are increased from some \$170,000 to some \$260,000, there will be a very serious problem. I do not know if the Secretary has the relevant numbers to clarify if there are pitifully few additional cases. If the number of additional cases is pitifully few, the situation will even be more pitiable if there will just be an increase of approximately 4%; and not many people will really be benefitted. The poorest people in Hong Kong do not even have some \$260,000, but the marginalized people may have some \$260,000 so long as they are employed. They cannot get legal aid in that case.

The first point that I wish to make is that the reviews to be conducted next year are really important. We believe that patching up is inadequate, and we must comprehensively review the whole legal aid system, especially when the existing FEL for legal aid is some \$260,000, which is still very low. The FEL must be considerably increased in order to help more people.

We have frequently discussed the second major problem. I think that one kind of cases related to wages on insolvency has all along been neglected. According to the Ordinance, if workers are to apply for payment from the Protection of Wages on Insolvency Fund (PWIF), they must petition for their employers' liquidation or bankruptcy. If they wish to do so, they have to apply for legal aid. What will happen if none of the 10 workers concerned gets legal aid? They cannot apply to the Labour Department for payment from the Fund. The whole thing is ridiculous and the situation will become stagnant, and no solution has been found so far. We have always said that this would not have been necessary. It is essential to petition for the employers' bankruptcy in order to get protection under the Fund. If the workers handle the matter on their own but not through the LAD, they may have to pay \$50,000 to \$60,000 for their outstanding wages of dozens of thousand dollars. Hong Kong people will definitely not do so. Can workers get protection of the Fund then?

I have discussed such a ridiculous phenomenon for many years but the scope has not been expanded such that the Labour Department would handle the matter or the means test for legal aid would be exempted, so that the workers in cases involving wages of dozens of thousand dollars can be protected under the Fund. They may be able to get back the money; of course, they cannot get the money back if there is nothing left of the company concerned. The employees of such a company may not even bother to petition for its bankruptcy, and they would rather wait for the Government to exercise discretion and give them payment. Why can the means test not be exempted in cases involving companies which may have something left? They workers may eventually be able to get back certain amounts of money.

Another point is that we are concerned about the appeal cases to the Labour Tribunal, and we still hope that these cases can be included under the Ordinary Legal Aid Scheme (OLAS). All of us can imagine that the employers and employees have seriously unequal strengths. If the employees are not granted legal aid, we can say that they will definitely lose the cases. The positions of the employers and employees are unequal, especially at the appeal stage. Frankly, most employers are consortia rather than ordinary enterprises. More often than not, ordinary enterprises will seek a settlement; but, wealthy consortia will certainly take legal actions against workers. Hence, the workers will be at a disadvantage because they do not have the financial capabilities to fight with their employers. When they lose the cases, they will have to bear their own litigation

costs and also those of the other parties. Given such circumstances, therefore, we think that all cases of the Labour Tribunal should be included under OLAS, such that the workers can be granted aid. Only in this way can it be fair. Thank you, President.

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

**MR WONG YUK-MAN** (in Cantonese): President, I am a member of the Subcommittee on Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91). I remember that only the Chairman of the Subcommittee and I attended the meeting the other day; so, I believe Honourable colleagues would not oppose this act which is merely a ritual.

However, I would like to highlight some of the issues. First, as the Administration has proposed, the FELs will be adjusted upward by 3.7% according to the increase in the Consumer Price Index (C) (CPI(C)). This inflation-related adjustment is basically the minimum requirement as the FELs are not too high *per se*. The Administration should further provide more data to illustrate the relation between the CPI(C) and the charges for legal services in the market. There are a number of barristers in this Council, buddy, and we understand that there can very often be astronomical charges for legal services. How can the 3.7% increase catch up with these astronomical charges?

The worst thing is that there are no standard legal charges. That was not a problem but the FELs should reflect the charges for legal services in the market. This may not be a criterion because there is no scientific objective standard. However, we must consider this issue. For this reason, I think the Administration should provide certain data to illustrate the relation between the CPI(C) and the charges for legal services in the market.

This Resolution proposes increasing the FELs for OLAS from \$260,000 to \$269,620; and increasing the FELs for the Supplementary Legal Aid Scheme (SLAS) from \$1,300,000 to \$1,348,100. The financial resources of legal aid applicants mean the aggregate of an applicant's yearly disposable income and disposable capital. Nevertheless, owing to the fact that self-occupied properties are not counted as disposable assets, there will be two different standards for

applicants holding self-occupied properties and renting properties. I do not know whether the Secretary understands the difference between self-occupied properties and rental properties. There is an injustice here.

Apart from the so-called FELs, the expenses to be shared by the aided persons of OLAS and SLAS also affect whether the subsidized legal services received by the aided persons manifest indeed the right of access to justice.

I would like to share my personal experience. My assistant filed for judicial review of the election of "Super District Council members" because these Legislative Council election candidates would enable the candidates from their political parties who took part in geographical elections in the same constituency to produce additional publicity leaflets. The judicial review filed by us was granted leave by the Court and the legal aid application was approved, and we are now waiting for the date of hearing to be arranged. I am not sure about the consequences if we win the proceedings, and I do not know if Dr Helena WONG would pay back those amounts. This needs to be sorted out after the Court has given its judgment. My assistant applied for legal aid for this case granted leave by the Court. However, he still has to share the expenses that are a few times his monthly salary because his assets are also counted. What is the meaning of legal aid? My assistant earns some \$10,000 a month but the amount he has to share reaches tens of thousand dollars. What can he do? Basically, he could not afford payment of the amount; thus, it was eventually approved that he may pay in instalments. I am sure that there are quite a few similar examples where people who cannot afford sharing the amounts have to bear the expenses. What can they do?

Has justice really been done? What is the original intention of legal aid? Mr LEE Cheuk-yan has cited some other examples just now. Therefore, the whole system is basically unsound and warrants reform, Secretary.

Even the Legal Aid Services Council (LASC) voiced opposition when we discussed the establishment of an independent legal aid authority (ILAA) at the meeting of the Panel yesterday. What else can be done? The Government has appointed its "cronies" to the LASC who changed the original position of the LASC.

Back in 1998, it was stated in the research report published by the consultant appointed by the LASC that an ILAA should be set up; and the then LASC accepted the report. TUNG Chee-hwa became the Chief Executive in 1998 and he rejected the recommendations of this report in 1999. The research report published by the consultant appointed by the LASC in 1998 supported the establishment of an ILAA and considered that the issue was urgent.

After more than 10 years, apart from people's increasing discontents, the social and environmental factors have not changed much and major changes have not happened. Strictly speaking, there is nothing to do with this subject. Is that right, Secretary? Your boss, LEUNG Chun-ying, is really useless! A decade ago when 500 000 people participated in the July 1 march and took to the streets, TUNG Chee-hwa's popularity rating was even higher than his now. Is that very bad? There is no denying that he is a failure. Yet, it does not matter because "Grandpa" .....

**PRESIDENT** (in Cantonese): Mr WONG, you have strayed away from the subject.

**MR WONG YUK-MAN** (in Cantonese): I know that I have somewhat digressed but I cannot help it, and I will feel sorry for myself if I do not take this opportunity to tell people to take to the streets on 1 July. So, remember to take to the streets on 1 July and overthrow the Government.

How have the social and environmental factors changed in these 15 years? Why is the current position of the LASC diametrically opposed to its position in 1998? I have not digressed from the subject as long as I am discussing this issue and this Resolution, and I have referred to the proposal on an ILAA and mentioned that we have discussed this issue for a long time.

What are the Government's justifications? The Secretary is sitting here but I do not know whether he has followed up the matter. What are the justifications? Please tell me later if the justifications are those justifications that I mentioned earlier. Have I just quoted the justifications previously given by the Government? The justifications are: an appeal mechanism was in place



and the service currently provided by the LAD was very satisfactory; third, the LAD funded legal actions against the Government in the past, which demonstrated that the LAD was very independent. We may put this in another way. The fact that the LAD funded legal actions against the Government in the past demonstrated that the LAD was very independent. All this is nonsense, and none of the three reasons supported the delay in establishing an ILAA. We often ask "why", but I wonder why we have not asked "why not". While the Administration agrees to setting up an ILAA, it says that there is no urgency to do so. That is the same as what is stated in the Basic Law: the ultimate aim is the selection of the Chief Executive by universal suffrage. This is just a saying.

Why has the Hong Kong Bar Association criticized the LASC? Its criticisms are not unjustified. In countries such as the United Kingdom, Canada and Australia, independent authorities are responsible for monitoring legal aid services, and government departments are not delegated regulatory powers. It is outrageous to say that the LASC should come under the Home Affairs Bureau. There are mismatches sometimes, and I really do not know how much they know as they are not legal professionals. I am also puzzled; the Government is sometimes really ..... making frequent and unpredictable changes in policies. We have to reform a problematic system.

As I have just said, in countries such as the United Kingdom, Canada and Australia, independent authorities are responsible for monitoring legal aid services, and the regulatory powers are not given to the Government. It is worthy of reference that the relevant systems of these three countries have established that the views of the disadvantaged are heard. It is even specified in Australia that members of legal aid regulatory agencies must be workers — Mr LEE Cheuk-yan must like to hear that most — who represent the well-being and interests of consumers and the community because the disadvantaged must be protected. What is legal aid? There is a common saying that "The poor should not fight with the rich, the rich should not fight with the officials". When the parties go to court, judicial relief is the last institutional step; when administrative relief is administratively unfeasible, the parties eventually need to seek judicial relief and strive for justice or sort out grievances in court. When judicial relief in court is also unfeasible, the parties should help themselves by taking to the streets, staging riots or revolutions for there is no such thing as peaceful "Occupy Central". When the disadvantaged people or groups are suppressed, efforts they

made for their interests or relief in court will be to no avail because there is such a system. Is there any way out?

Therefore, we can only set up an ILLA and institutionally protect the independence of this ILLA, so that persons intending to sue the Government do not need to worry about being treated unfairly. You do not trust the LAD, right? We often help people apply for legal aid in our ward offices, but their applications are invariably rejected. There is definitely an appeal mechanism, but the outcome of the appeal is the same and these cases are rarely successful. Among those cases I have handled, almost none is successful and nearly all appeal cases are unsuccessful. The LAD has absolute power in the selection of lawyers to provide the so-called independent legal advice. For example, the LASC has appointed Deloitte Touche Tohmatsu Limited as a consultant this time; what is this all about?

Therefore, we support this Resolution. I am also a member of the Subcommittee which has only held one meeting. That was really strange as I was the only one who attended the meeting with the Chairman of the Subcommittee; but both of us did not think there was a problem, and we performed the ritual and endorsed the inflation-related adjustments according to the law. Hence, we will certainly support this Resolution today. This is the decision made by the Subcommittee and I have only made use of the subject under discussion to put forward my ideas. 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 the Secretary for Home Affairs to reply. The debate will come to a close after the Secretary has replied.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, I thank Members for their support of and views on the motion. I would briefly respond to the points made by Members just now.

A few Members have mentioned the establishment of an independent legal aid authority (ILAA). I understand that the Panel on Administration of Justice and Legal Services (the Panel) of the Legislative Council discussed yesterday the proposal on establishing an ILAA and the feasibility and desirability of establishing an ILAA, and invited deputations concerned to express their views. We will make reference to the views of Members, the legal profession, other stakeholders and members of the community, and carefully study the proposals of the Legal Aid Services Council (LASC), before reporting to the Panel.

As Mr Albert HO has mentioned in his report, besides reviewing annually the financial eligibility limits (FELs) of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) to take into account changes in the Consumer Price Index (C) (CPI(C)), it is also the practice of the Administration to conduct (i) a review of the FELs of legal aid applicants biennially to take into account changes in litigation costs and (ii) a review of the criteria used to assess the FELs of legal aid applicants every five years. In response to Members' request for actual data, we concluded the last round of comprehensive review in 2011, and subsequently the FEL for OLAS was adjusted upward by 48% from \$175,800 to \$260,000, and the FEL for SLAS substantially adjusted upward by 166% from \$488,400 to \$1,300,000, so that more people would meet the FEL for legal aid application.

The preparatory work for a new round of comprehensive review has commenced, and the Administration plans to report to the Panel the progress of these two reviews in the 2013-2014 Legislative Session.

The scope of SLAS was recently substantially expanded on 30 November last year to cover more types of cases. The Administration would consult the LASC on whether the scope of SLAS should be further expanded, after acquiring more operational experience, before reporting to the Panel in the next Legislative Session.

Members have proposed again today the inclusion of defamation actions into OLAS. Such cases were previously considered as inappropriate for inclusion into OLAS. Members have also proposed the inclusion of election petitions and actions involving industrial relations into the scope of legal aid. We will consider these proposals in the review to be conducted next year.

With these remarks, President, I implore Members to support the motion.

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

(Members raised their hands)

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

(No hands raised)

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

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. There are a total of four Members' motions for this meeting.

First Member's motion: Mr Andrew LEUNG will move a motion under Rule 49E(2) of the Rules of Procedure to take note of the Business Registration Ordinance (Amendment of Schedule 2) Order 2013, which was included in Report No. 19/12-13 of the House Committee laid on the Table of this Council.

**PRESIDENT** (in Cantonese): According to the relevant debating procedure, I will first call upon Mr Andrew LEUNG to speak and move the motion, and then call upon the chairman of the subcommittee formed to scrutinize the relevant item of subsidiary legislation, Mr WONG Ting-kwong, to speak, to be followed by other Members. Each Member (including the mover of the motion) may only speak once and may speak for up to 15 minutes. Finally, I will call upon the public officer to speak. The debate will come to a close after the public officer has spoken, and the motion will not be put to vote.

Members who wish to speak on the motion will please press the "Request to speak" button.

I now call upon Mr Andrew LEUNG to speak and move the motion.

**MOTION UNDER RULE 49E(2) OF THE RULES OF PROCEDURE**

**MR ANDREW LEUNG** (in Cantonese): President, in my capacity as Chairman of the House Committee, I move the motion, as printed on the Agenda, under Rule 49E(2) of the Rules of Procedure, for a debate on the Business Registration Ordinance (Amendment of Schedule 2) Order 2013 included in Report No. 19/12-13 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments.

I so submit.

**Mr Andrew LEUNG moved the following motion:**

"That this Council takes note of Report No. 19/12-13 of the House Committee laid on the Table of the Council on 26 June 2013 in relation to the subsidiary legislation and instrument(s) as listed below:

<u>Item Number</u>	<u>Title of Subsidiary Legislation or Instrument</u>
(11)	Business Registration Ordinance (Amendment of Schedule 2) Order 2013 (L.N. 91/2013)."

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

**MR WONG TING-KWONG** (in Cantonese): President, I speak in my capacity as Chairman of the Subcommittee on Business Registration Ordinance (Amendment of Schedule 2) Order 2013 (the Subcommittee).

The Business Registration Ordinance (Amendment of Schedule 2) Order 2013 (the Order) aims to adjust downward the annual levy rate on each Business Registration Certificate (BRC) issued under the Business Registration Ordinance for the Protection of Wages on Insolvency Fund (PWIF) from \$450 to \$250. If an election is made for a three-year BRC, the levy will be reduced from \$1,350 to \$750.

The Subcommittee noted that the PWIF registered a surplus of \$536.5 million for the 2012-2013 financial year and an accumulative surplus reaching \$3,287.2 million by the end of March 2013. Given that the financial position of the PWIF has continued to improve, adding to this that the reduction of levy rate was proposed according to the review mechanism agreed by the Protection of Wages on Insolvency Fund Board (the Board) in 2008, members supported or raised no objection to the proposed reduction of BRC levy rate.

However, some members were of the view that given the sound financial position of the PWIF, the Administration should review the scope of the PWIF so as to enable the employees affected by the insolvency of their employers to recover the full or higher amount of wages in lieu of notice, severance payment, and pay for untaken statutory holidays and untaken annual leave. This would accord the employees concerned better coverage or the full statutory entitlements under the Employment Ordinance.

The Administration explained that the PWIF is set up to provide timely financial relief to employees affected by the insolvency of their employers, instead of seeking to recover all the outstanding wages and entitlements in arrears from insolvent employers in accordance with the employment contracts. The scope of coverage and the maximum amount of the ex-gratia payment for the outstanding wages and other statutory entitlements are clearly specified under the Protection of Wages on Insolvency Ordinance, whereas employees can seek to recover all the wages in arrears and outstanding payment of statutory entitlement under the Employment Ordinance through other established channels. The Administration took the view that making ex-gratia payment from the PWIF in respect of wages in arrears owed to an applicant by his insolvent employer and recovery of outstanding wages owed to an employee from his employer are separate issues.

It also highlighted that the Board has undertaken to review the scope of the PWIF in respect of pay for untaken annual leave, pay for untaken statutory holidays and the payment ceiling of \$10,500 one year after the implementation of the Protection of Wages on Insolvency (Amendment) Ordinance 2012 which took effect on 29 June 2012. To address members' concerns, the Administration has undertaken to commence the review of the scope of the PWIF, including the issues of concern raised by members, in the second half of 2013.

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

Considering that there is an abundant accumulated surplus and the reduction of levy rate was proposed according to the established review mechanism, the DAB supports the Order.

While some members called on the Administration to review the scope of the PWIF, other members were dissatisfied that employees affected by the insolvency of their employers were unable to recover all outstanding payment of statutory entitlement. The DAB holds that the PWIF has been improving its scope of coverage in a gradual and orderly manner, with a view to gradually according employees better coverage.

However, the PWIF has all along aimed to serve as the safety net of the last resort for the affected employees by providing ex-gratia payment for contingency, instead of "acting as the underwriter" of the insolvent employers. This serves to prevent the unscrupulous employers from shifting their liability on default payments of statutory entitlements entirely to the PWIF, thereby abusing the PWIF. Therefore, we cannot rely on the support of the PWIF alone to protect the interests of employees. Both the Administration and employees should also be responsible.

The Administration should play a good role in gate-keeping and step up enforcement against wage offences, for example, stepping up inspection, strengthening publicity and promoting reporting. Employees, on the other hand, should heighten their awareness of personal interests, with a view to preventing wage arrears or leave untaken on a prolonged basis before these cases are dealt with or reported. Only by so doing can we comprehensively and effectively strengthen our protection of the interests of employees.

Some members also urged the Administration to provide a timetable for review of the scope of the PWIF. In this connection, the Administration has undertaken to commence the review in the second half of 2013. I hope that once the review is completed, the Administration will expeditiously report to the Legislative Council.

With these remarks, President, I support the Order.

**MR LEE CHEUK-YAN** (in Cantonese): President, before speaking on this motion, I will first give this pair of goggles to Secretary Matthew CHEUNG. This is not because he had "dived" (meaning "not showed up") in the dock-workers strike, but because the Protection of Wages on Insolvency Fund (PWIF) is now "seriously flooded with money". It would therefore be better for him to put on the goggles in times of flooding.

The surplus of the PWIF is really staggering and it has already accumulated \$3.2 billion. Can Members imagine for how long this \$3.2 billion will last? What is the annual payout at present? The latest figure is \$64 million. But assuming that the annual payout is \$100 million, the surplus may last for 32 years even if no income is generated for the rest of the time. Of course, Members or the Secretary may say "'Ah Yan', you are too optimistic because in times of economic downturn, it may even have to seek funding approval."

Of course, this may happen. In view of the PWIF's present surplus of \$3.2 billion, we have not said "no" to the proposal of lowering the levy rate of the BRC. In fact, there will not be any problem even if no levy is imposed. I am most infuriated and dissatisfied at the Government's approach of compensation, which is like "squeezing toothpaste out of a tube" within the scope of the PWIF when it has accumulated more than \$3 billion.

President, last year, we begged the Government not to be stingy and raised the compensation for "leave pay". What is meant by "leave pay"? President, last year, the Government developed a new item of protection and specified a two-year protection period in respect of pay for untaken annual leave because it is possible that an employee has not taken annual leave for two years. So, how many days of annual leave are there in two years? An employee should have seven to 14 days of leave in each year, and thus the maximum leave accumulation is only 14 to 28 days. Worse still, the Government has introduced another poor arrangement, and that is, a payment ceiling of some \$10,000. As a result, even if an employee has 28 days of untaken annual leave, he can only receive a maximum of some \$10,000. In other words, the Government has imposed a safe ceiling.

Besides, an employee can only receive payment for untaken statutory holidays for up to four months, which means that an employee can only receive payment for the untaken statutory holidays within four months before his



company closed down. Yet, there are cases where an employee has not taken any statutory holidays in the past many years, but the Government refused to make improvement in this regard in the motion proposed last year.

While the Government was reluctant to make improvement, the PWIF is now "seriously flooded". In fact, the PWIF has remained "flooded" for many years, and this is nothing new. The situation was most serious in 2002 when 23 000 applications for ex-gratia grants were recorded, and the payout reached some \$500 million. The situation subsequently improved in 2004 when there were only about 13 000 applications and the payout dropped to \$381 million. In 2008, the number of applications dropped to some 6 000 and the payout was only \$96 million. To date, there are only 2 976 applications and the payout is only \$640 million.

As Members can see, the number of applications has been dropping and the Secretary may probably attribute this to the rebounding economy. And yet, the rebounding economy is not the only reason. Why would the number of applications drop and result in a lower payout? This is because the severance payment can be offset by the Mandatory Provident Fund (MPF) contributions, thus the claims payment for severance payment from the PWIF will also drop accordingly.

As Members may be aware, the severance payment may be offset by the MPF contributions. After 2000, all employees are required to make MPF contributions. So far, the offsetting arrangement has remained most unfair and I have already highlighted this point time and again. It is unreasonable to use the MPF contributions to offset severance payments, but this is the case actually. As a result, the amount of severance payment received by an employee is actually decreasing, and it has become part of the accrued benefits derived from his MPF contributions. If his employer goes bankrupt, his MPF account still exists. In other words, it is possible that an employee may not receive any severance payment.

President, the existing calculation method is also very unfair. Let me quote an example of an employee who is owed \$100,000 in severance payment. I do not know why the Administration always suppresses and makes life difficult for the employees by offsetting their severance payment with the MPF contributions. After the offsetting arrangement, the MPF balance is, for

example, \$75,000 ..... No, it should be the sum of the \$50,000 severance payment from the PWIF and 50% of the balance, that is, \$50,000 plus \$25,000, which equals to \$75,000. Therefore, the amount of compensations from the PWIF is \$75,000. No matter what, the severance payments must be offset by the MPF contributions. Thus, the amount payable from the PWIF would depend on the balance after the offsetting arrangement. If \$75,000 is offset against the MPF contributions, the amount payable will be zero. If it exceeds \$75,000, the result will also be zero. Compensations will only be made when it falls below \$75,000.

Worst still, the basis of calculation is not \$100,000. If \$100,000 is used as the basis of calculation, after offsetting \$75,000, the \$25,000 balance will be paid by the PWIF, which is fine. In other words, after offsetting the severance payments by the MPF contributions, the balance will be paid from the PWIF. And yet, this is not how the calculation is done at present. Rather, it is calculated on the basis of the maximum payout of the PWIF before the offsetting arrangement. Very often, the employees do not receive any compensation.

According to the Secretary, all these issues can be reviewed. But given that the Government is hoarding \$3.2 billion — as I have just said — and assuming that the annual payout is \$100 million, this \$3.2 billion will last for 32 years even if no income is generated for the rest of the time. How can the Government be so stingy in protecting the interests of workers?

Just now, Mr WONG Ting-kwong appeared to have been brainwashed by the Secretary, and considered it unreasonable for the Government to "act as the underwriter" for this might give rise to abuse. The fact is, in any event, the employers will abuse the PWIF. If the employers intended to walk away without paying a cent, the PWIF would be abused anyway regardless of the scope of the coverage and whether there was an "underwriter". The purpose of the Government in "acting as a underwriter" is not to prevent the employers from abusing the PWIF, but to accord the employees better coverage.

Given that the PWIF is "serious flooded", why was the Administration so reluctant to accord more coverage? Why was the Administration so reluctant to accord coverage for the many scenarios? The maximum payments for outstanding wages and payment in lieu of notice are \$36,000 and \$22,500 respectively, and no review has ever been conducted over the years. Regarding

the "leave pay", the arrangement endorsed last year has only provided limited protection for the employees. So, will the Administration conduct a review to extend the protection for employees in this exercise?

However, judging from the established mindset of the Secretary, he has been reluctant to do better and will, in the end, reply that the PWIF does not aim to subrogate the employers in terms of the latter's responsibility. Although the PWIF does not aim to subrogate the employers, it can accord employees better coverage after all. In fact, for cases where the outstanding wage is less than \$36,000, the responsibility of compensation will be borne by the PWIF. Then why would the PWIF be unable to take up more responsibilities of the employers and accord the employees better coverage? I must reiterate that according employees better coverage will not encourage employers' abuse of the PWIF. This is because if employers intended to abuse the PWIF, they would do so anyway and would not bother if the employees received the due amounts. Under this circumstance, why would the Secretary need to put on the goggles?

The PWIF is now "seriously flooded" with a surplus of \$3.2 billion. Even if the levy is reduced from \$450 to \$250, it is estimated that the surplus come next financial year will still stand at \$180 million and the flooding will continue. Although the PWIF is "seriously flooded", the Government is still reluctant to make improvement. I feel deeply sorry about this and strongly request the Government to expeditiously make improvement.

Thank you, President.

**MR TOMMY CHEUNG** (in Cantonese): President, first of all, I wish to declare that my companies are liable to business registration fee.

Regarding this amendment, that is, to reduce the BRC levy, which finances the Protection of Wages on Insolvency Fund (PWIF), from the current level of \$450 to \$250, I will give my full support to it. While the adjustment of \$200 per annum is not a significant reduction, it is better than none to small and medium enterprises (SMEs). In particular, we are in time of high inflation and high operating costs. It is hence more pressing for the authorities to reduce the levy expeditiously.

After all, the provision of wage protection on insolvency is a system which requires a group of employers to subsidize another group of employers who have lost their businesses and failed to pay their employees after closure. It is not at all fair indeed. Therefore, when the PWIF is "flooded with money", there is simply no reason to ask employers to make any further contribution to it. Meanwhile, we should note that the BRC levy rate may be adjusted according to the economic situation and the financial position of the PWIF. For example, in 2002, the levy rate was increased from \$250 to \$600 per annum, following a rapid depletion of the PWIF caused by an upsurge in claims for ex-gratia payment after the Asian financial crisis. However, as there were fewer claims in the last few years, the surplus of the PWIF had accumulated year after year. As at the end of March this year, the PWIF had a surplus of more than \$3.28 billion. This figure suggests that there is a "serious flooding". In this situation, I would consider the levy reduction as coming too late and it should have been introduced long ago.

In scrutinizing this piece of subsidiary legislation, some Members have taken the opportunity to request an expansion of the scope of the PWIF. Mr LEE Cheuk-yan has also made this request in his earlier speech. In my view, they have digressed from the subject. While the PWIF is "flooded", it does not mean that its scope has to be expanded as the PWIF is just a safety net to give basic protection to the unlucky employees. The PWIF is not supposed to absolve employers from their responsibilities of compensating their employees when they put up the shutters.

A continued expansion of scope will just turn the PWIF into a collective responsibility system. It will be most unfair to those employers who have done nothing wrong but are required to pay this subsidy. In addition, will it give employees a wrong impression that their interests will be protected by the PWIF in all cases? Employees may then become less alert and rely heavily on the policy protection. Even if they are aware of the financial problems of their companies, they may just turn a blind eye to them and do not bother to take any action.

All of these problems warrant our deep thoughts and in-depth discussions. In fact, the Government has already undertaken to review the scope of the PWIF in the latter half of this year. Therefore, we should not mix up this levy amendment with the expansion of scope.

Just now, I heard Mr LEE Cheuk-yan say that the PWIF, which has a surplus of \$3.28 billion, may sustain for 32 years even if it losses \$100 million each year. Of course, I do not agree to his viewpoint as it is tantamount to suggesting that the PWIF can continue to run for a hundred years if it spends less than \$100 million a year. As we all know, no businessman will wish to go bankrupt or close down his business. When there is boom and bust, up and down, in the economy, it is hard to tell whether the PWIF can really run for 32 years if its annual expenditure is \$100 million. If this claim is tenable, we may just let the PWIF take up all the responsibilities. Also, I do not share the view that contributions to the Mandatory Provident Fund (MPF) should not be used to offset severance payments. As far as I can recall, when employers were asked to support the MPF more than a decade ago, they were clearly informed that there would be such an offsetting arrangement. At that time, employers considered this arrangement useful reference. Unfortunately, union representatives now keep asking for more and seek expanding the scope of the PWIF.

Therefore, I wish the Secretary, who is present today, would not go too far in the review to be conducted in the second half of this year. In particular, the review should not make SMEs and micro-enterprises hold back in recruitment and hire no one except their family members.

Thank you, President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Members have already spoken. I now call upon the Secretary for Labour and Welfare to speak. The debate will come to a close after the Secretary has spoken.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, the Government introduced the Business Registration Ordinance (Amendment of Schedule 2) Order 2013 to the Legislative Council on 29 May this year to reduce

the rate of Business Registration Certificate (BRC) levy, which finances the Protection of Wages on Insolvency Fund (PWIF), from the current level of \$450 to \$250 per annum. A subcommittee was later set up under the Legislative Council to scrutinize this Order.

Here, I wish to extend my sincere thanks to the Chairman of the Subcommittee, Mr WONG Ting-kwong, and the Subcommittee members for their participation in the scrutiny of the Order. The Subcommittee held one meeting to discuss the proposal in detail and give us lots of useful views. I am glad that the Subcommittee has unanimously raised no objection to the Order.

I also wish to thank Members for their speeches, and I am going to give a brief response here.

First of all, I would like to thank Members for supporting adjusting the BRC levy rate suitably downward to benefit small and medium enterprises (SMEs) as the financial position of the PWIF continues to improve. Before suggesting this proposed adjustment to the BRC levy rate, the Protection of Wages on Insolvency Fund Board (PWIF Board) had fully considered the financial position of the PWIF and all other relevant factors, including the impacts of the cyclical ups and downs of Hong Kong economy on the number of applications received by the PWIF and its payout, the role of the PWIF as safety net of the last resort for employees affected by business closures, and the expansion of the PWIF scope after the Protection of Wages on Insolvency Ordinance (the Ordinance) was amended last year. It was a comprehensive assessment. The proposed adjustment set out in the Order should give the PWIF a reasonable surplus for it to maintain sufficient reserve and cash flow to cater for the possible needs arising from economic downturn and any sudden outbreak of major insolvency cases, as well as the additional ex-gratia payments arising from the amendment of the Ordinance last year. This proposal was formulated based on the views of both employers and employees to ensure the effective operation of the PWIF in future. This is very important.

I note that some Members, including Mr LEE Cheuk-yan, have just expressed their concern over the expansion of the PWIF scope. The PWIF was set up to provide employees with timely assistance in the form of ex-gratia payment when their employers become insolvent after closure. It has been

enhanced on eight occasions. We should all remember that, at the very beginning, the amount of wages in arrears covered by the PWIF was capped at \$8,000. Yet, today, the maximum amount of ex-gratia payment for each employee has been significantly increased to \$289,000, covering four months of wages in arrears (maximum \$36,000), payment in lieu of notice (maximum \$22,500), severance payment (maximum \$50,000 plus 50% of any excess entitlement), and the two new items added by the aforesaid amendment last year. These two items are: pay for untaken annual leave in the last two years of employment; and pay for untaken statutory holidays within last four months of employment (maximum \$10,500).

The Amendment Ordinance came into effect on 29 June 2012. The PWIF Board has agreed to review the coverage of the PWIF in respect of pay for untaken annual leave, pay for untaken statutory holidays and the payment ceiling of \$10,500 one year after the implementation of the Amendment Ordinance. In February this year, when the Legislative Council Panel on Manpower discussed the proposed adjustment of the levy rate, members offered many suggestions on the review of the PWIF coverage, which were later relayed to the PWIF Board for consideration. I wish to emphasize that the PWIF Board has actively responded to those suggestions and undertaken to carry out a comprehensive review of the computation of wages in arrears, payment in lieu of notice, as well as severance payment just mentioned by Mr LEE Cheuk-yan, when it reviews the Amendment Ordinance in the latter half of this year. I have also undertaken to report to the Legislative Council Panel on Manpower pending the outcome of the review.

Mr WONG Ting-kwong has earlier asked the Labour Department to act as a good gatekeeper so as to prevent abuse of the PWIF. I would like to respond to this point briefly. In fact, we have taken many measures to prevent the PWIF from being abused over the past few years. Among others, we have invited some retired disciplined service officers, particularly police officers who are experienced in investigation, to help us strengthen our ability to collect evidence and intelligence. Meanwhile, Labour Inspectors are tasked to look for signs of default on payment of wages by inspecting the workplaces of different industries. We also conduct widespread publicity. We have provided a complaints hotline and called on the public to report any irregularities so that we can follow them up immediately. We will institute prosecution once we have obtained sufficient evidence.

Just now, Mr LEE Cheuk-yan has asked whether the authorities will adopt a more lenient approach in processing applications as the PWIF has a huge reserve. The PWIF Board has indeed agreed to consider this suggestion in the latter half of this year. However, I wish to stress one point. As we all know, the PWIF is considered as safety net of the last resort. Therefore, as I have just stated, the authorities must be very careful and prudent in managing its finance to ensure the proper utilization and, above all, sustainability of the PWIF so as to protect the interests of both employers and employees. As a matter of fact, reviewing the history of the PWIF, we will find that the PWIF suffered serious losses in the seven years of hard time between 1997-1998 and 2003-2004. All of the reserves of the PWIF were exhausted in a few years. We must therefore be very careful. However, I agree that we should make reasonable improvements as appropriate to protect the interests of employees.

Lastly, I wish to thank members for supporting our proposed amendment this time. I am also grateful to the Chairman and members of the PWIF Board for their participation as it took several rounds of discussion for us to reach a consensus on this reduction proposal. Upon the completion of the scrutiny by the Legislative Council, the new levy rate will formally take effect on 19 July.

President, I so submit. Thank you.

**PRESIDENT** (in Cantonese): In accordance with Rule 49E(9) of the Rules of Procedure, I shall not put any question on the motion.

**PRESIDENT** (in Cantonese): Second Member's motion: Motion under the Legislative Council (Powers and Privileges) Ordinance.

Members who wish to speak on this motion will please press the "Request to speak" button.

I now call upon Mr LEUNG Kwok-hung to speak and move the motion.



**MOTION UNDER THE LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE**

**MR LEUNG KWOK-HUNG** (in Cantonese): President, this motion should have been proposed by Mr James TIEN but because Mr TIEN could not secure enough supporting votes for the same motion that he proposed in the House Committee, he dropped the proposal. I certainly understand his intention. He thought that since he could not even secure enough supporting votes in the House Committee, when it is brought to this Council, under the system of separate voting, if it cannot get the support of a majority of Members returned by functional constituencies, the motion will not be passed. Given that the motion will meet greater difficulties in passage here, he dropped the proposal. This I understand. However, as a Member of the Legislative Council, I think that I am duty-bound to propose a further inquiry into the suspected conflict of interests relating to former Executive Council Member, CHEUNG Chun-yuen, which may involve the undue favour given him by the LEUNG Chun-ying Government and the conflict of interests involving others under the Legislative Council (Powers and Privileges) Ordinance.

Frankly speaking, it is also most appropriate for me to propose this because at the meeting of the Panel on Development on 22 January, I asked Secretary Paul CHAN who was present at the meeting some questions based on hearsay. The case concerned CHEUNG Chun-yuen, the right-hand man of LEUNG Chun-ying during his election campaign for the Chief Executive. Mr CHEUNG is a very close friend of LEUNG Chun-ying and he was a Member of the Executive Council and Chairman of the Urban Renewal Authority (URA) then and he was also the Chairman of United Company RUSAL. But it was rumoured that the Hong Kong Mercantile Exchange Limited (HKMEX) of which he was the Chairman and held over half of the shares had financial troubles and I asked if he had made declaration to the Executive Council concerning the financial troubles.

Of course, under the present system, even if a Member of the Executive Council is up to the neck in debt and everyone knows it, he still needs not declare it because the current declaration system does not require Members to declare their debts. Many Members pointed out at the meeting that Executive Council Members had to bear the responsibility if they were in debt as that might lead to conflict of interests and they might be held to ransom by their creditors. Hence, they should declare their debts. However, when I was asking that question that

day and Secretary Paul CHAN was just about five feet away from me, the question that I asked aloud was cut short by "CHENG Yaojin<sup>1</sup>" who knew just a few tricks. This person was Dr CHIANG Lai-wan of this Council who disrupted my question by complaining to Dr LAU Wong-fat, Chairman of the meeting, that I had deviated from the subject. This incident has been uploaded onto YouTube as the "Yuen Qiu battling Long Hair incident" which has got hundreds of thousand hits.

Because of Dr CHIANG's disruption, the whole incident turned into a bickering between Members. My question, however, was meant to hold Secretary Paul CHAN accountable and to ask him if he had heard about that, but in the end the matter was left unsettled. I could do nothing about it as it was only hearsay. I am neither Sherlock Holmes nor a star among government officials, and besides I do not drink Mao Tai, hence no one would tell me the truth after drinks. However, God is in charge in the unseen world, as CHEUNG Chun-yuen, the former Member of the Executive Council, really got in trouble later and it was true that he had financial troubles. Someone also talked about the same incident that I had mentioned. That was the former Elder Brother of the Hong Kong political arena, Mr Allen LEE. In a Radio Television Hong Kong programme, he openly said that CHEUNG Chun-yuen, the former Member of the Executive Council, had borrowed \$70 million from the real estate tycoon, Dr Henry CHENG, at an interest rate of 1%. This incident has of course become an unsolved mystery now because Mr Allen LEE is sued for defamation after claiming that he has heard such an incident. Fortunately, I enjoy immunity; otherwise I would be sued as well.

President, different people are telling different stories. Claims made by other people may not be facts but claims made by me will be treated as anything but facts by Paul CHAN. Why do I propose to conduct an inquiry? Because the dramatic development and the clues tell us that Secretary Paul CHAN is not any ordinary man in the street and he would not have truly believed the sole aim of CHEUNG Yaojin who employed every trick she knew to disrupt my speech that day was just to bicker with me. Even if he was truly disgusted with or scoffed at our bickering, he should have understood the essence of my question. I made my question very clear when I asked him if he had heard that CHEUNG Chun-yuen was up to his neck in debt and had borrowed \$70 million at the

---

<sup>1</sup> A character in a novel who is featured as suddenly coming out to seize the presents for the emperor.

interest of 1% from a creditor who was no one else but the real estate developer Dr Henry CHENG. I questioned that as CHEUNG Chun-yuen was the URA Chairman, whether this incident would constitute a conflict of interests or even corruption. But no sooner had I come to this point than CHEUNG Yaojin came out to cut me short.

Ordinary people might think or feel that it was another row between Members and there was nothing surprising but as the Secretary, he knew that a Member was holding him accountable. Even if he clicked into the YouTube website a few more times to put more money into my pocket afterwards, he should be very clear that a Member truly meant to question him. Only that he was unable to answer it. Why? That is exactly because CHEUNG Chun-yuen did have financial troubles as it was later revealed. Hence, another Member of this Council, Mr CHAN Kam-lam who served in the Securities and Futures Commission (SFC) said that the SFC was already watching him closely and had noticed the relevant problems but nothing appeared to be abnormal about him. Although he was not too well-off, he was like a gambler who could punt in time every time, injecting enough capital to enable the company to continue its operation, and hence the SFC did not take any action. If Mr CHAN Kam-lam was not lying — he should not be as he was a non-executive director of the SFC and he had no reason to do so — then Mr CHAN Kam-lam also knew that CHEUNG's company might be in trouble.

Then there was Mr CHIM Pui-chung, a former colleague of ours, who said that back in November 2010, CHEUNG Chun-yuen had also borrowed from him an amount of \$8 million. Later the cheque he used to make repayment was bounced, which of course could be an indication that he was short of money. In other words, I, who had no friends but foes in the business sector and rarely dabbled in the gatherings of officials, had also heard of such things, which was the so-called rumour that many people knew, how could the Secretary not know? Even if the Secretary was not aware of that, after I had pointed it out and straightly held him accountable, why did he still make the excuse that he did not know? President, if you have good memories, you should know that once such incidents come to light, everyone will leave you, which is the reality. Even those who were your good friends before will also shy away.

Secretary Paul CHAN was asked why he made it an exception for CHEUNG Chun-yuen. President, I have to remind you that the most absurd thing was that CHEUNG Chun-yuen was already holding numerous public

offices; and it was even more absurd that he had served in the URA for six years already but the Government still extended his term for two more years against the "six-six principle". There has got to be a reason for exceptional arrangements in the political arena, so what was the reason for this arrangement? Was that because of the rumour about his financial troubles or other reasons? I had not known then but later found out that he was recommended by the accountable official, Secretary for Development, Paul CHAN.

President, what is politics? Politics is conversation, the ears and the eyes. To be a politician, other than having a tongue like me, he also needs to have the ears and eyes to hear and look. The Secretary has political assistants who can go to social functions for him. Why was it that even a person who never dabbled in the gatherings of officials could hear things that he could not get wind of? Therefore, I am 400% sure that Paul CHAN only turned a deaf ear to things he did not want to hear. In my opinion, it was impossible that Paul CHAN had not known CHEUNG Chun-yuen was in trouble, neither was it possible that he had not heard that CHEUNG had borrowed money from a real estate developer. But whether it was true or not was another matter.

As such, he still recommended CHEUNG to John TSANG. John TSANG has even keener ears and sharper eyes and he is used to socializing with the rich. Even if Paul CHAN did not tell, he should have heard the rumour, should he not? There is something known as hearsay. He frequents cocktail parties. Do you really think he goes there simply to drink a glass of cocktail and get the "leftovers"? His purpose is of course to get information. Therefore, normally speaking, Secretary Paul CHAN and Secretary John TSANG could not be unaware of CHEUNG Chun-yuen's financial troubles and he could be investigated by the police.

Hence, there is a problem here. If Secretary Paul CHAN had turned a deaf ear to it and Secretary John TSANG had shut his eyes, what about the Chief Executive? The Chief Executive should be the final gatekeeper but the problem is that we cannot trust the Chief Executive. President, please look at this picture. These two people have the same gestures. I call them birds of a feather who act in collusion to do evil and neither of them is good. The Chief Executive depended on this person to run his election campaign. He was involved in all incidents such as the "Shanghai Boy" and the like. Has the Chief Executive practised favouritism because of it? It is hard to tell.

Therefore, President, we always say that "people's livelihood is no trivial matter" in this Council and I believe this is not a trivial matter. If we do not invoke the Legislative Council (Powers and Privileges) Ordinance to conduct an inquiry, we will never be able to investigate thoroughly all those who knew CHEUNG Chun-yuen or knew about the situation, or to find out whether the decision to reappoint CHEUNG Chun-yuen to the public office in the URA was to allow him to continue to socialize with the rich and powerful on a vast platform and exchange rewards or engage in other shady business with the great power vested in his office. Therefore, Mr James TIEN, my comrade, you should have persevered in pursuing the answer to the question but unfortunately, you were afraid of losing.

President, I have proposed this today with the aim of saving some face for the Legislative Council. In this bloc of "LEUNG's fans", Paul CHAN is "LEUNG's fan", CHEUNG Chun-yuen is "LEUNG's fan" and LEUNG Chun-ying is a super "LEUNG's fan". The three of them closed up the door, claiming that they had no knowledge of something that the whole world knew, and reappointed CHEUNG to the public office in the URA so that he could continue to accumulate his fortune. If we do not investigate this, who would? If Members veto the inquiry, so be it. When the Independent Commission Against Corruption finds out anything in the future, what face will we have? President, a single decision will differentiate human from fowl. There is a difference between man and fowl.

**PRESIDENT** (in Cantonese): Mr LEUNG, please move the motion.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I move that this Council appoints a select committee to inquire into the alleged conflict of interests involving Mr CHEUNG Chun-yuen.

**Mr LEUNG Kwok-hung moved the following motion:**

"That this Council appoints a select committee to inquire into the surrender by the Hong Kong Mercantile Exchange Limited of its authorization to provide automated trading services and related issues; 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 Mr LEUNG Kwok-hung be passed.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, the Securities and Futures Commission (SFC) took the initiative to make public on 18 May that the SFC had made an official notice pursuant to the law to withdraw the authorization of the Hong Kong Mercantile Exchange Limited (HKMEx) to provide automated trading services. The SFC made a further statement on 21 May that it had commenced an investigation into the suspected irregularities of the HKMEx in the financial affairs and referred certain matters to the Commercial Crime Bureau of the police (CCB).

In respect of the authorization of the provision of automated trading services, during the oral Question Time of the Legislative Council on 29 May, I provided the information about the regulatory arrangements and the principles of law enforcement by the SFC to help Members gain a better understanding. The SFC also attended the meeting of the Panel on Financial Affairs on 3 June and submitted documents to the Panel.

I understand Members' concerns. Given that the investigation by the law-enforcement agencies is underway, it is most imperative to allow the SFC and the CCB to continue their investigations pursuant to the law. The relevant authorities have already commenced the arrest actions and legal proceedings. I very much hope Members will consider that under such circumstances, if the Legislative Council invokes the Legislative Council (Powers and Privileges) Ordinance to investigate the HKMEx case, it will hinder the law-enforcement agencies' investigations which are already underway and may even affect the legal proceedings in the future.

President, after Members have spoken, I will make another response.

**MS EMILY LAU** (in Cantonese): President, I rise to speak in support of the motion moved by Mr LEUNG Kwok-hung to urge the Legislative Council to appoint a select committee to inquire into the surrender by the Hong Kong Mercantile Exchange Limited (HKMEx) of its authorization to provide automated trading services and related issues; and that in the performance of its duties the

committee be authorized under the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to exercise the powers conferred by that Ordinance.

President, Mr LEUNG put it correctly. Perhaps this motion should be moved by Mr James TIEN but whoever moves it, we wish that Members had endorsed the motion at the meeting of the House Committee on 7 June. If this motion were passed in the House, it would have been moved by the House Chairman, Mr Andrew LEUNG. However, many Members opposed it at that time. If we agree to setting up the select committee for the inquiry today, I believe the scope of the inquiry will not involve the police criminal investigations just mentioned by the Secretary. Hence we should have a consensus that we do not wish to affect the police investigation.

However, President, at the meeting of the House that day, many Members from the business sector said that it was a very serious matter. Once if someone accused the Securities and Futures Commission (SFC) of being partial in handling this case, or favouring the HKMEx or Mr CHEUNG Chun-yuen, it would directly impact the status and reputation of Hong Kong as an international financial centre. Mr Martin LIAO also said that given such a serious matter, it was most appropriate for the Legislative Council to invoke the P&P Ordinance to conduct an inquiry. However, he was worried that the Legislative Council's inquiry would affect the investigation of the police. But it would not be a problem if we clearly state that our inquiry will not touch areas. President, the main purpose of our inquiry is whether the SFC has done anything considered to be inappropriate in performing its duties. Many Members queried this at the meeting of the Panel on Financial Affairs that day, but the representative of the SFC failed to give us a satisfactory answer and that led to the proposal by Mr James TIEN and other Members to conduct an inquiry by the Legislative Council. The SFC's hesitation in answering the question also aroused people's suspicion and cast a shadow over the entire incident. Therefore, we very much agree that the Legislative Council should set up a select committee and hope that Members will carefully consider it and support it. Although we have established many select committees before, this is inevitable as so many troubles have surfaced in the SAR and the Legislative Council could not just stand by with folded arms.

Nevertheless, President, I mentioned one point at the House meeting that day and I wish to highlight it today. At first I had heard that many Members were in favour of an inquiry but why did they all change their minds just a few days later? It has been extensively reported in the press that the Liaison Office

of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) has interfered again, again I mean. They have done that before. It has been rumoured that some Members have gone to West District, whether they were invited to have tea there or went there directly, and there they were ordered or instructed not to support this proposal. I also mentioned at the House meeting that sometimes Members like to use "hypocritical rhetoric" but that day I could hear that they somehow hinted someone had interfered and some Members were called for a "chest X-ray" there. President, this is downright outrageous. The Legislative Council is just performing its duties to investigate the affairs within the SAR, why do the officials from Beijing bother to get involved? If it is so, how much is left of "one country, two systems"?

Moreover, some Members also said that the Secretary and other government officials had discussed it with them and everything was settled afterwards. If a one-hour closed meeting can settle the issue, it is really wonderful. President, why is an inquiry necessary? Because we want to see people take a vow under the sun to give a clear account of what happened, rather than having some officials negotiate with some Members behind closed doors. We wonder if they have drunk tea and eaten dim sum together. Then, after the negotiation they said, "Everything is settled and no investigation would be necessary." President, that is not the right way to deal with problems. Therefore, if the Legislative Council is to launch an inquiry, perhaps Members will also need to be summoned to recount what has happened.

Everyone thought that this case should be dealt with seriously, President, and there is indeed a consensus. We should do everyone justice and most importantly do Hong Kong, as an international financial centre, justice through a due process. Some Members pointed out at that time that it was not an isolated incident and it has also been rumoured that the SFC did not handle matters in an impartial and proper manner. Therefore, it is all the more necessary to invite them here and ask them clearly how they exercise their powers to put the local and foreign investors at ease because they have enormous powers. We also hope that through today's debate, we can tell the LOCPG that we do not want them to interfere with the affairs of the SAR, neither do we wish to see them summon Members to receive their instructions as this not only humiliates the Members but also deals a blow to the prestige of the Legislative Council. More importantly it undermines "one country, two systems".



I have recently read that a survey conducted by a university found that the people's confidence in "one country, two systems", the SAR Government and the Central People's Government has dropped over 20%, a record low since 1996. President, there is a cause for everything. Hence, I hope that neither the SAR Government nor officials of the LOCPG will do anything to undermine the SAR and "one country, two systems" again. I hope that Members will agree to setting up a select committee to conduct an inquiry to find out the truth so as to strength the investors' confidence in continuing to do business in Hong Kong. I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): Mr James TIEN should be very happy today, because "Long Hair" (Mr LEUNG Kwok-hung) saluted you with the highest honour by calling you a comrade. This is a form of revolutionary salutation. You may boast to those outside that "Long Hair" has also called you a comrade.

President, the Labour Party certainly supports Mr LEUNG Kwok-hung's motion to invoke the Legislative Council (Powers and Privileges) Ordinance to inquire into issues related to the Hong Kong Mercantile Exchange Limited (HKMEx). The reason is that, in my opinion, the matter as a whole *per se* highlights a very important point, that is, we always claim that Hong Kong is an international financial centre. We do not wish to see the development of Hong Kong as a financial centre or its capitalism gradually turn into a kind of crony capitalism.

Crony capitalism refers to the use of crony connections for personal gains. What are crony connections? Do intricate relationships exist in the political and business circles *per se*? Members may look at Barry CHEUNG under discussion now. The intricate relationships are so evident that no investigation is necessary. Members can see that Barry CHEUNG is surely the right-hand man of LEUNG Chun-ying. During the election campaign of LEUNG Chun-ying, the one whom he relied on and trusted most was Barry CHEUNG, as all Hong Kong people knew. This is apparent to all.

The one whom LEUNG Chun-ying trusts most is now in trouble. Does the HKMEx so debt-ridden that it is insolvent? Certainly the HKMEx cannot run now. An investigation by the Securities and Futures Commission (SFC)

concluded that it cannot run anymore and its licence has been revoked. However, how did it happen? Did anyone know? The Secretary will surely not tell us. He will only say that the case has been handed to the Commercial Crime Bureau (CCB) for investigation. Hence, no one will know the truth.

That no one knows the truth justifies an inquiry. The inquiry does not take the approach of a commercial crime investigation. Rather, it will focus on whether benefits arise from crony connections.

Members are aware that Barry CHEUNG was formerly Chairman of the Urban Renewal Authority (URA). Which party does the URA deal with? Is it not real estate developers? He was also a Member of the Executive Council, and he chairs the "LEUNG's fans club", as Members all know. He is involved on so many fronts and has so much power at his disposal. My advice is that if you want to make money, stay away from politics; if you are involved in politics, you have to be clean. Now, he pursues both money and politics, or fame and fortune.

Nevertheless, what they think is probably right. Fortune comes on the heels of fame. What a terrible idea it is. Has Barry CHEUNG, through the fame and power obtained, resorted to crony connections for the pursuit of interests? We do not know the truth of the whole matter. Mr CHAN Kam-lam said that the SFC was aware of it a year ago, so what did the SFC do after learning about it? No one knows. Was he allowed to find ways on his own to meet the shortfall, just because he was Barry CHEUNG? Did he obtain a low-interest loan of \$75 million from Henry CHENG? No one knows. Now, he is suing "Brother Allen" for libel. Perhaps "Brother Allen" did not have the whole picture. The amount might be \$70 million instead of \$75 million, and the interest rate might be 2% instead of 1%. All in all, no one knows the truth. That is why an inquiry is necessary.

This is the most awful part of the whole system. We hope to use an inquiry to examine whether awful crony connections exist. Since he is the right-hand man of LEUNG Chun-ying, the SFC might favour him, such that he could be like a fox masquerading as a tiger to borrow money to keep his business afloat, but to no avail. Eventually, it still had to close down. We now demand that an inquiry be conducted from this perspective.

Such a perspective is missing in the investigation by the CCB. They are unable to find out if the SFC has condoned Barry CHEUNG just because of connections. However, I am convinced that if an inquiry is conducted, the truth will surface, because SFC officials conduct their work most carefully. I believe there must be minutes on all the things talked over as well as written records on all memos written. Therefore, once all written records and minutes are available, what they did will then be evident and crystal clear.

Even though we see the importance of the matter, as Ms Emily LAU remarked earlier, the LOCPG had summoned Members for a "chest X-ray"<sup>2</sup>, such that Members all said no to an inquiry after that. Mr Abraham SHEK claimed that his "chest" is clean, and that he had not been to any "chest X-ray". How do we know? After the "chest X-ray", the LOCPG may find that his "chest" is clean. Did the "chest X-ray" take place? By the "chest X-ray", the LOCPG meddles in Hong Kong politics. Furthermore, the DAB has all along been reluctant to invoke the Ordinance on the ground that it is an imperial sword that should not be deployed rashly. Later, they may make the same remarks that government investigations are underway and that it should not be invoked arbitrarily, as they usually did.

Nevertheless, does Hong Kong benefit from crony connections? It will eventually become an unresolved case in history, about which no one knows the truth. Then, you may help LEUNG Chun-ying cover up the misdeeds of his, those around him, his right-hand men or Barry CHEUNG. No one will know what has happened, with the dirtiest stuff swept under the carpet. We do not wish to see such things swept under the carpet. They should instead be put under the sun.

Of course, we are not optimistic of the eventual passage of the motion. Yet, we have to insist that an inquiry is in order, so that we can examine whether the incident as a whole involves benefits gained through crony connections.

Lastly, another point I would like to mention is the problem of debts among Members of the Executive Council, as mentioned earlier. The Government always says that declaration is not necessary. However, there are two things that

---

<sup>2</sup> In colloquial Chinese, having a "chest X-ray" means being summoned by a higher authority for some dressing down, or told to toe the line of that authority.

may drag one down: one is scandal or woman, and the other is money. Both are by nature critical.

Certainly, I am not suggesting that Members of the Executive Council have to declare everything, including mistresses, which may be covered by the system in future. However, the current scope of declaration should at least include debts. If debts are not included, it is actually like another bomb, because those who are in debt are more vulnerable to the control of others, and there may be more serious conflicts of interests. But regrettably, our Executive Council does not require declaration in this respect.

Hence, there are many problems in the system as a whole. We always mention rule of law and say that Hong Kong is a financial centre. Yet, if it turns out that crony capitalism prevails, Hong Kong as a financial centre will not stand long.

Thank you, President.

**MR SIN CHUNG-KAI:** President, a little over a month ago, the Hong Kong Mercantile Exchange Limited (HKMEx) had its authorization as an automated trading services (ATS) provider withdrawn by the Securities and Futures Commission (SFC). After the start of the investigation on 15 May, based on insufficient financial funds, the SFC gave the HKMEx the opportunity to respond to their concerns, and after its failure to satisfy the necessary financial conditions, the SFC officially withdrew the ATS authorization on 18 May 2013. As expressed in the SFC Statement on the HKMEx released on 21 May 2013, closing down of open trade operations has been smooth and is now complete. However, during its investigation, the SFC also found evidence of suspected financial affairs irregularities. It referred these matters to the Commercial Crime Bureau (CCB). So far, five people have been arrested for suspicion of using a false instrument, and one person of using false documents, totalling six arrests. Since the first three arrests, the then Chairman of the HKMEx, Mr Barry CHEUNG, has taken a leave of absence from all public positions, including the Chairman of the Urban Renewal Authority Board (URAB), and Member of the Executive Council.

President, although investigations have been thorough enough as to result in the arrest of six potentially-involved persons, an auspiciously close relationship between Mr Barry CHEUNG and the Chief Executive Mr C Y LEUNG poses

unanswered question concerning the extent of knowledge and involvement Mr C Y LEUNG had of and in the HKMEx financial irregularities. Furthermore, the SFC has also failed to sufficiently answer questions posed by members of the Panel on Financial Affairs during the hearings. The motion moved by Mr LEUNG Kwok-hung proposes to grant a select committee the authority to clarify these suspicions under section 9(1) and section 9(2) of the Legislative Council (Powers and Privileges) Ordinance. President, considering a case of such gravity, shrouded with such political haze, it is the responsibility of the Council to raise questions on the work of the Government and to summon persons concerned to testify or give evidence under Article 73 of the Basic Law.

The relationship between Mr Barry CHEUNG and Mr C Y LEUNG has been worryingly close. In the 2012 Chief Executive election campaigns, Mr CHEUNG was appointed the Chairman of Mr C Y LEUNG's campaign office. After Mr C Y LEUNG's successful election return, CHEUNG was appointed a Member of the Executive Council. A few months later, CHEUNG was reappointed as the Chairman of the URAB on 26 April 2013, a mere three weeks prior to the HKMEx investigation and license revocation.

The *South China Morning Post* reported that, "CHEUNG was 'LEUNG's No 1 aide'." Obviously, this close relationship would not have been a problem if sources had not confirmed that CHEUNG's dire financial situation was already known a year prior to the SFC's investigation. Executive Council Member, Mr CHEUNG Chi-kong, stated on a TVB talk show on 26 May 2013 that, "A year ago, when it was not yet a matter of much concern, it was perceived as, 'Oh, it is in bad business; it is cash-strapped'." President, when other fellow politicians and colleagues, including Legislative Council Member Mr CHAN Chi-chuen, were aware of CHEUNG's financial issues, and given CHEUNG and C Y LEUNG's close relationship, should LEUNG not have known as well? Even if the situation was not much concern for CHEUNG's colleagues, the Chief Executive must make sure of a candidate's overall merit before appointing him to any committee or board, never mind the Chairman of the URAB three weeks before the investigation.

If we give Mr C Y LEUNG the benefit of the doubt, and presume that when other Executive Council and Legislative Council Members were aware of CHEUNG's situation a year ago, LEUNG was not aware, it is hard to justify a lack of knowledge merely three weeks before an official investigation. If not a cause for concern, CHEUNG's financial affairs should have been, at least, a cause

for caution — something that was thrown to the wind with CHEUNG's reappointment. President, something is amiss when persons watching from a distance claim to see more than the person right by one's side. The public deserves answers.

President, concerning the SFC's role in this, because of current investigation afoot by the SFC and the CCB, the SFC refused to answer questions proposed by the Panel on Financial Affairs. Mr LEUNG Kwok-hung's motion, although it will try to unravel the CHEUNG-LEUNG relationship and its effect on the HKMEx investigation, really aims at clearing the name of the SFC.

Both *The Standard* and the *South China Morning Post* reported that Mr CHAN Kam-lam, a non-executive director of the SFC, was aware of CHEUNG's financial situation up to a year ago. In the *South China Morning Post* on 24 May 2013, Mr CHAN was quoted to have said, "The SFC has been closely monitoring the financial situation of the HKMEx for a year before it finally closed its doors .....". Furthermore, on 4 June, *The Standard* stated that Mr CHAN Kam-lam had changed his statement from the week prior, from "The SFC had noticed financial problems at HKMEx a year back", to "The SFC has in the past gradually discovered operational difficulties." Either way it is worded, it is plain that the SFC had knowledge of the HKMEx's financial difficulties early on. Still, even with available documents showing that the HKMEx faced financial problems as early as January this year, as reported by *The Standard*, Mr CHAN Kam-lam continues to deny that the SFC had prior awareness. Obviously, there is much confusion and uncertainty around this issue; hence, we and the public would merely like to ascertain whether the SFC was aware of CHEUNG's financial dilemma prior to the investigation.

The Legislative Council (Powers and Privileges) Ordinance gives the SFC the same rights and privileges as those of the witnesses held before the Court; it will be able to answer questions more freely with comfort on its protection. If, upon answering inquires, its response to previous knowledge is "yes", why, then, did it postpone the investigation for so long? Was there special treatment given to the HKMEx in handling the matter, considering the closeness between its Chairman and the Chief Executive C Y LEUNG?

President, while the SFC and the CCB are investigating Mr CHEUNG and the HKMEx accusations, no one is investigating the SFC. Although the moved

motion would give this select committee the authority to inquire into CHEUNG and LEUNG's relationship as well, the main purpose of the motion would be to review the SFC. As an international financial centre, it is important that we maintain the credibility of the SFC so as not to affect the confidence of local and overseas investors. With the HKMEx's credibility already annulled, the least we can do, as representatives and voices for the Hong Kong people and our international community, is to ease their worries, to restore confidence in our financial domain.

President, there have been arguments from those opposing this motion that a select committee from the Legislative Council will interfere with the current investigations of the CCB and the SFC. If this motion were to pass, I am sure that those involved will act prudently and rationally, so as not to prejudice the current criminal investigations. Another Member made a poignant point, expressing that the current SFC and CCB investigations may be compromised if it is discovered that there were signs of corruption in the SFC. Of course, even though our ultimate goal is transparency to the public, I am confident that the select committee will handle incriminating evidence accordingly so as not to disrupt the current investigations by the CCB and the SFC.

President, let us step back for a moment and see this HKMEx case from the public's eye. Here, in the Legislative Council, surrounded by learned colleagues, it is simple to say that rumours are rumours, that the public will talk and the truth will come in time. However, for those people who are not directly in contact with the Government, the CCB, or the Legislative Council, all they have are these rumours. President, in the public, rumours become truth, and the phrase "in time" becomes agitation, a call for distrust, for suspicion.

With the postponing of universal suffrage, of housing plans made in Mr C Y LEUNG's manifesto, and now, of addressing the SFC's role in this case, public satisfaction with current political conditions is at an all-time low since 2004, at 13.3%, while dissatisfaction has increased to a worrying 56% of the population, according to an opinion poll by the University of Hong Kong released yesterday. 42.2% of Hong Kong people are not confident in the city's future, and people's distrust in the Hong Kong Special Administrative Region (HKSAR) Government has set another record since the end of 2003, rising to 36.8% of people distrusting the HKSAR Government.

President, there is no reason why we cannot start a separate investigation with a select committee if we are all confident that information will be handled prudently. How can the public be confident in us if we are not even confident in ourselves? The opposition claims that this matter is not urgent enough to risk compromising the other investigations underway, but, at such a low point in political confidence and satisfaction, when is improving the state-society relation not of great urgency? Let us stop the public's opinion of the current political condition from being marred any further. Let us ascertain the credibility of our regulatory bodies, or repair that which is damaged. President, it is our responsibility to the people to monitor the work of the Government, to untangle truth in areas where they cannot. Therefore, because of our duty to Hong Kong in this politically and economically-affecting matter, I support the motion moved by Mr LEUNG Kwok-hung. Thank you, President.

**MR RONNY TONG** (in Cantonese): President, not long ago I had a chat with friends from the business sector after a meal. I do not recall at that time who mentioned Barry CHEUNG, the HKMEx and LEUNG Chun-ying. A friend of mine said, "Oh, forget it. It is really foulness and pestilence." I thought about this remark over and over and concluded that this expression "foulness and pestilence" (烏煙瘴氣) best describes the situation. President, maybe you are much better than me in this area. I have checked the Chinese expression and if I am not mistaken, please correct me if I am, it should have come from a novel entitled *Heroes and Heroines* (《兒女英雄傳》) written in the Qing Dynasty. The expression describes a group of bandits and they can be called foul and a pestilence.

Is this matter foul and a pestilence? I think that this is the best description there is for it. President, this motion today seeks to find out a cause in a pool of muddy water. The problems involved are not just those which affect the position of Hong Kong as an international financial centre, but the doubts and queries we have about this are far more than we can ever imagine. The most important thing is that this group of people characterized by foulness and pestilence are not ordinary men in the street, not the kind we would bump into in Ngau Tau Kok or Tseung Kwan O, but those in the top management of regulatory bodies. Why have they fallen into such a despicable state?



President, first, why was Barry CHEUNG given an authorization without making any efforts so that he could have founded the HKMEx? How did he convince the Securities and Futures Commission (SFC) that he had the financial strength? I asked this question because I have heard many people from the business sector say that he has never been regarded as a man with great financial strength. This is actually not important because the HKMEx is to be accountable to the public and its operation is merely to provide a platform for trading. Actually, I do not think this business can ever run into losses. It is because there is no investment cost and no risk in operation and provided that there are transactions, there will be commission charged.

As far as I know, this is a business which will not run into losses. But why did he run into losses up to a point where he could not even pay the rents? It might not matter very much if he could not pay the rents, but the fact is he defaulted on such payment for one year. But why did the SFC know nothing about it? The office premises which the HKMEx leased are not situated in a remote place, but a place which taxpayers had footed part of the bill for building it.

Why do people in the business sector, especially our former colleague CHIM Pui-chung, say that this is something every person in town knows except the SFC? Does the SFC live in its ivory tower, detached from the reality? Or — and this is more terrifying — that the SFC knows about the truth but it does not take any action because he is a political upstart, that is, the right-hand man of the most powerful man in Hong Kong? Is this the reason?

I am not at all interested in learning about why Barry CHEUNG becomes penniless. I am more interested in knowing why he could have sustained for such a long time after he had run into such heavy losses while the SFC did not speak out or take any action. President, what is most baffling to people is that he was appointed as a Member of the Executive Council this year. I think it could be understandable if the SFC knew nothing about it because it is a regulatory body. But there is no reason why LEUNG Chun-ying knows nothing about it. This is because as I see it, they are as close as brothers. Mr Barry CHEUNG lent him his great help so that he could become the Chief Executive. The two persons meet each other so often and there is no reason why LEUNG Chun-ying does not know his background. How could he become a Member of the Executive Council?

Another point is even more shocking. We all know that LEUNG Chun-ying practices cronyism. But in Hong Kong there is at least a monitoring mechanism for vetting, a cornerstone of our success. This mechanism is set up not only for preventing LEUNG Chun-ying from practising cronyism but also for ensuring that persons who can have access to the most confidential and sensitive information will not divulge it and that such will not be used by other people for the purpose of obtaining any interest which is unfair or detrimental to society.

President, this vetting mechanism has a value for its existence in that it can probe into problems. If it is a well-known fact that Barry CHEUNG goes about borrowing money and everybody in town knows about it but that vetting mechanism cannot detect anything, then it is really bad. It is because we cannot rely completely on the mechanism to ensure that Members of the Executive Council will not be used by other people.

President, some time ago I raised an oral question, but like all other oral questions, in the end I still could not figure out the reasons for the matter. Actually, the purpose of oral questions is only that each of them takes up 20 minutes of the Council's meeting time and we may never be able to get an answer. The answer could well be like this: "I have asked questions, but maybe he becomes penniless only after. If this is the case, then it is none of my business."

But the question is, it is because there is *prima facie* evidence which proves that he has got financial problems for a long time and before he is appointed as a Member of the Executive Council, he has run into financial problems already. When he was about to be appointed, the relevant vetting system failed to function and the vetting which was carried out each month or continuously had failed too. Should we not probe into all these matters? Do the people of Hong Kong not have the right to know the truth?

President, the fact is, and it is also the most important thing, Hong Kong has been reunited with the Motherland for more than 10 years and I have to admit that our core values have constantly been on the decline. We suspect that these pillars in society in which we take pride have been eaten to the core.

President, the Commissioner of the ICAC is not clean himself, the SFC has not done a good job in monitoring, and the Executive Council is good for nothing.

Just to what extent has Hong Kong degenerated? If we do not wake up and carry out a thorough investigation, then it would be impossible to know whether or not the system which all along has been running smoothly and successfully has been eroded and destroyed. Do we wish to see the pillars of our society and which account for our success collapse tomorrow, the day after tomorrow or next year?

I am surprised to hear some Members say that such matters should not be probed into and it is not worth it. But as things now stand ..... President, you may think that there is a heavy cynical tone in my speech. I do not know how to translate this into Chinese. The word "cynical" is hard to translate. Ms Claudia MO has just taught me about it.

Whenever Members propose to invoke the Legislative Council (Powers and Privileges) Ordinance, there are bound to be other Members who oppose it by putting up all sorts of reasons. During the nine years in which I have served as a Member of this Council, there are Members who put up all sorts of reasons to oppose an inquiry, with only one exception and it is the LEUNG Chin-man incident. However, at that time elections were about to take place and candidates from the DAB pledged that once they got elected, they would probe into the LEUNG Chin-man incident. In fact, the incident is the only one throughout all these nine years that they did not have any excuse not to carry out any inquiry.

In all of the other incidents, they would come up with all sorts of excuses, like, "it is not the right time for it", "other agencies are making an investigation", "the matter is not that important", "there are many meetings to hold", "our workload is heavy", "no result will come out of such an investigation" and so on. At times I would think that people from the pro-establishment camp really have good imagination and for reasons that we cannot think of, they can certainly think them up.

President, is there any other agency which is carrying out an investigation into the matter? Yes, there is. But the Legislative Council is not an enforcement agency and the kind of investigation it carries out is not about any criminal offence. Our concern is public interest and political ethics. All these things may not have anything to do with the police or criminal law. Then does it mean that actions not related to criminal offence are not important? If this is so, many businesses in this Council can be left idle because those matters which we

discuss day in and day out are not about criminal offences. But they are related to the public interest of Hong Kong. Often times what we discuss are issues of political ethics. It follows that there is no reason why this Council will not use the functions and powers conferred on it by the Basic Law simply because a criminal investigation is being carried out. This is impossible.

Apart from this, are there any more reasons? President, the remaining reasons may be that this Council has too many meetings to hold and so we should leave it for next year, or that there is no use conducting such an inquiry and we may as well shelve it. If any person puts up the argument that there are too many meetings in this Council that there is no time for it, I do not think that matters because there is no need for these people to carry out the inquiry, we can do it ourselves. But when preparatory work is being done to set up a select committee, they do not feel like it and just scramble to join it. And they even want to be the chairman of the select committee. The reason why they want the chairmanship of the select committee is to ensure that nothing will come out of the inquiry and that matters that warrant investigation will be evaded. They are really incredible. We can just stand there and we can do nothing about it.

Honestly, if they think that the matter should be investigated and if it is suggested that they will carry out the inquiry, I am glad to see that. I will be the first one to indicate that I will not join the select committee and they can probe into the matter. This is because they have all my trust. But the question is, despite my trust in them, they have no trust in me. I say that there should be an inquiry, but they say that no inquiry is needed. I can let them do the inquiry, but they refuse. When I do not let them do it, they will scramble for the right to conduct the inquiry. Then what should we do?

President, Ms Claudia MO is laughing. But I do not think that this is in any way laughable. I would think that this is a big irony. Because it points to this question. What are Members doing in this Council? President, I really do not know. However, I hope Members from the pro-establishment camp can ponder over this matter. Probing into the incident will not use up a lot of their time. All they need to do is to say "yes" and we will help get all the work done. Even if there is anyone from among them who wants to become the chairman, we can agree with them because we cannot get anyone from our side made the chairman no matter how hard we fight for it. I would not mind if someone from their side becomes the chairman. But I would ask them not to veto this proposal to conduct an inquiry. As I have said before, this incident shows the foulness

and pestilence and so how can we not probe into it? It is foulness and pestilence.

President, I have this sincere remark for Honourable colleagues sitting on my left: I hope you can have sympathies for the people of Hong Kong and the future of Hong Kong. Please agree to conducting an inquiry into the case.

Thank you, President.

**MS STARRY LEE** (in Cantonese): President, I wish to make a declaration first. The accounting firm in which I am working is the auditors for the Hong Kong Mercantile Exchange Limited (HKMEx). However, I have not taken part in any auditing work related to the HKMEx.

President, I rise to speak in opposition to Mr LEUNG Kwok-hung's motion. The motion proposes to appoint a select committee and invoke the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to inquire into the surrender by the HKMEx of its authorization.

First of all, I wish to respond to the remarks made by Mr Ronny TONG. He pointed out that the DAB only showed its support for invoking the P&P Ordinance in the LEUNG Chin-man incident. I think Mr TONG must have forgotten that in the Lehman Brothers incident, we had carried out the inquiry together. I think Members will all remember it. The inquiry into the Lehman Brothers incident lasted for a number of years and I think the public would have a clear answers to questions like whether or not results were obtained from the inquiry and the victims were really given assistance.

President, the P&P Ordinance is the "imperial sword" of this Council. All along the DAB has been very prudent in invoking the P&P Ordinance. Unless the matter concerned is related to public interest and there is no other option available to this Council, we would not lend our support easily. This is the basic principle to which we have been holding all along.

The finance industry is a major pillar of the Hong Kong economy. The SFC being a regulatory body shall maintain a high degree of credibility at all times. Therefore, with respect to matters of public concern and related to reasonable doubts, it is true that this Council is obliged to inquire into the matter

and dig out the truth, in order to protect the reputation of Hong Kong as an international financial centre. But does this mean that we have to invoke the P&P Ordinance at this point in time and is no other option available? A more important point is, will the invocation of the P&P Ordinance help in finding the truth of the incident?

President, what is the greatest concern to the people? The people are most concerned about the question of whether any person has broken the law or the rules in the HKMEx incident. If it is found out that someone has done so, he should be brought to justice in order to uphold the fairness of the system and the reputation of Hong Kong as an international financial centre. As a matter of fact, actions taken by the SFC and the Commercial Crime Bureau (CCB) of the police have been very swift. On the one hand the SFC probed into the irregularities of the HKMEx and took the initiative of transferring the documents suspected of forgery to the CCB for follow-up action on the other. The CCB stepped in and began its investigation on 21 May. As of today, six men and one woman have been arrested and four of them have been prosecuted, and it is expected that they will appear in court very soon.

President, with respect to the HKMEx incident, both the SFC and the CCB are conducting investigations and such investigations are in full swing. If the Legislative Council intervenes and begins an inquiry, the SFC will certainly be summoned. In order to facilitate the inquiry undertaken by the Legislative Council, there is no other choice for the SFC but to allocate a great amount of time and manpower resources to prepare for the hearings in the Legislative Council. This will inevitably have an impact on the progress of its investigation into the HKMEx incident. If the Legislative Council insists on invoking the P&P Ordinance and beginning its own inquiry, the objective reality will certainly be impeding the work of the SFC.

In view of the fact that the DAB considers that invoking the P&P Ordinance at this moment in time to probe into the HKMEx incident will only serve to hinder the progress of the investigation, we will not lend it our support. If after the investigations conducted by the SFC and the CCB there are still misapprehensions in society, the Legislative Council can follow the matter up through different channels.

President, invoking the P&P Ordinance now will not only hinder the progress of the investigations presently being undertaken, I am even more

worried that suppose the Legislative Council passes a motion to invoke the P&P Ordinance without any substantive evidence, this will serve to undermine the credibility of the SFC and set a dangerous precedent. The SFC is an enforcement agency for the stock market, responsible for ensuring compliance by listed companies and all stakeholders in the financial market. Its role is like that of the police. Suppose the Legislative Council cannot disclose all the facts because the SFC is still conducting an investigation, or the Legislative Council in its questioning time cannot dispel the misapprehensions of the Members, there is a possibility that the SFC may be accused of favouritism. Therefore, if support is given to investigating an enforcement agency by invoking the P&P Ordinance, this move will be too rash and hasty.

Once the Legislative Council launches its inquiry, it is inevitable that the subject of inquiry will overlap with that of the other organizations conducting investigations. The fairness of these investigations undertaken by enforcement agencies may be compromised and this will affect the credibility of these enforcement agencies. The citizens of Hong Kong expect to see impartiality in the enforcement agencies which can conduct investigations in a fair and independent manner and on the basis of facts. They should not be subject to any political influence and make no political consideration in the course of enforcement and investigation. If the Legislative Council now invokes the P&P Ordinance and begins an inquiry, it will bring the enforcement agencies under the influence of political pressure and public opinion. This is not a rational approach to take.

Moreover, the SFC has all along enjoy good credibility, and it has done its part for the small investors in the privatization attempt by the PCCW and in the Apex Horizon All-Suite Hotel case. So I would think that what society needs now is trust in the enforcement agencies so that they can have enough room to complete the investigations. But we must admit that the SFC is excessively tight-lipped. Speaking from my personal experience, the SFC will not disclose anything about the progress of the investigation and at times it will not even disclose the names of institutions being investigated. The SFC should review this practice, for if not, it may lead to more conjectures and speculations in future.

President, I wish to add one more point and that is, do different treatments necessarily mean bias and condoning wrongs? I notice that some Honourable colleagues have criticized the SFC for being discriminatory and there is an obvious difference in its enforcement actions against the HKMEX and the

brokerages. Since these two types of companies are by nature different, it is understandable that they are subject to two different kinds of regulation. With respect to this point, the SFC has appeared before the Panel on Financial Services to give an explanation. It said that the HKMEx is only a trading platform which matches buy and sell orders. Once the trading in futures is complete, the task will be taken over by an independent clearing house in London, the LCH. And the LCH is regulated by the Bank of England. So even if there are financial problems with the HKMEx, since it does not come into direct contact with the moneys of the clients, no immediate threat will be posed to the security of the assets of the investors and brokers. On the contrary, since the brokers have the moneys and shares in their hands, including the assets of the clients instead of merely the operating capital of companies, they may be subject to stringent regulation owing to the overriding concern of protecting the investors.

Although this answer may not be able to allay all the misapprehensions, I know that some Members have already requested through the Panel on Financial Services the SFC to come here to make another clarification. In the meeting of the House Committee last time, I called upon Members who still had worries to consider writing a letter to the Panel on Financial Services. We will certainly request the SFC to come here to allay Members' misapprehensions.

Lastly, President, I wish to point out that there are costs to consider if we wish to set up a select committee to inquire into an incident and the costs involved are very high. This Council has undertaken similar inquiries a number of times previously and the expenditure is more than \$10 million for each inquiry. In the inquiry undertaken on substandard piling works of public housing blocks during 2001 to 2004, the expenditure was \$16 million. In the inquiry into LEUNG Chin-man during the last term of this Council, the expenditure was \$15.7 million. As for the most expensive inquiry, it is certainly the one about the Lehman Brothers incident. The inquiry took three years and eight months to complete, which is nearly a whole term of this Council, and cost \$28 million.

As many Members have said on various occasions, and I also share their view because I have also taken part in some of these select committees, it is not certain if these select committees can find out all the truth and give answers to all our questions and doubts. In the discussion earlier on the resolution on the appointment of Judges, I remember a Member said that the truth might not necessarily be found even in court or judicial proceedings. So when each Member decides whether or not to support the invocation of the P&P Ordinance,



he or she should consider carefully the results which this can achieve and the public money to be spent.

President, because of these arguments, the DAB considers that invoking the P&P Ordinance at this moment will impede the investigations currently being undertaken and will not help very much in clarifying the facts. Conversely, it may even lead to an unnecessary blow being dealt to the credibility of the SFC. Therefore, we oppose the motion proposed by Mr LEUNG Kwok-hung.

**MS CLAUDIA MO** (in Cantonese): First of all, I would like to respond to the remarks made by Ms Starry LEE. She said that in the Lehman Brothers incident, the Legislative Council (Powers and Privileges) Ordinance was also invoked to conduct an inquiry. At that time the DAB indicated that it would support the inquiry and in the end, no result came out of the inquiry. I would think that some results were achieved by the inquiry. She said that there is no meaning at all to inquiries. She rejected the idea that the Legislative Council should conduct lengthy hearings on the subject. I do not agree to this idea at all. At least the small investors were compensated after the inquiry was conducted.

(Ms Starry LEE stood up)

**PRESIDENT** (in Cantonese): Ms Starry LEE, what is your point?

**MS STARRY LEE** (in Cantonese): A point of order, President. I must clarify that earlier on I did not reject the report of the inquiry into the Lehman Brothers incident. I was only saying that .....

**MS CLAUDIA MO** (in Cantonese): You said that no result had come out of the inquiry .....

**PRESIDENT** (in Cantonese): Ms Claudia MO, please sit down first.

(Ms Claudia MO sat down)

**PRESIDENT** (in Cantonese): Ms Starry LEE, what you have raised is not a point of order. I must remind Members that according to the Rules of Procedure, if Members think that a Member who is speaking has misunderstood the contents of the speech that he or she made earlier, the Member should wait until the speaking Member has finished his or her speech, and then proceed to requesting that a short clarification be made. But the Member should not interrupt the speech of the Member concerned.

Ms Claudia MO, please continue.

**MS CLAUDIA MO** (in Cantonese): President, can I begin afresh?

**PRESIDENT** (in Cantonese): Please continue.

**MS CLAUDIA MO** (in Cantonese): I wish to respond to the view put forward by Ms Starry LEE. She said that invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to inquire into the Lehman Brothers incident — and I quote her to this effect: "Did any result come out of the inquiry?" She seemed to be saying that the inquiry was unnecessary. But I consider that the inquiry was meaningful. Although not all investors are very happy with the amount of compensation, the inquiry did achieved some effect. If she is asked, why is the inquiry concerning LEUNG Chin-man not mentioned? The answer is, the inquiry into LEUNG Chin-man eventually achieved the result that the Hung Hom Peninsula did not have to be demolished and the inquiry revealed facts that were previously unknown to people and as a result, the people's right to know was manifested to a great extent.

People often say to me, "What is the use of fighting for it? You know that it would not work in the end." But we have a saying which is commonplace and that is: Although there may not necessarily be any result coming out of the fight, there will certainly be no results if we do not put up a fight." If there is a mechanism in place which allows us to look at what information can be obtained from an inquiry but we do not give it a try, then there can never be things like computer, people will not travel in space and there will be no such things as the Shenzhou spaceship. Those ideas will have a bad influence on the young people.

Another argument is that invoking the P&P Ordinance to conduct an inquiry is a waste of public money. Making a record of the hearings will spend all the money. When Members like to say that certain things will lead to a waste of public money, may I ask, how many Members are now here? In Hong Kong where land is scarce and expensive, and people have to bear with crowded conditions, how many people are sitting here? How large a space are we using? What is the purpose of building the Legislative Council Complex? A sum of some \$1 billion was used to build this Complex. Originally there were only 60 Members in this Council and now 10 more Members are added. What is the job of these Members? If Members like to say that certain things are a waste of money and if they judge the value of something only in monetary terms, I would think they can go home and need not stay in the Chamber. I think this will save some public money. Having said that, I do not think you can save much money by being absent. All the logic of arguments you advanced to oppose filibustering is that it was a waste of public money.

As to the question of how an inquiry this time can help clarify things, the remarks made by Barry CHEUNG have led to more questions. He said that what the citizens want to know most are the criminal aspects and the authorities have already started to investigate the criminal issues. The citizens want to know who have broken the law and which law has been contravened. It would be good if these things are known. However, the procedures of criminal investigation will not be made public and officers conducting the investigation will need to rely on legal advice to decide whether or not a piece of information can be presented as evidence in court. If it is considered not suitable, the information will not be so used. But members of the public know nothing about it. The Legislative Council is different from the police and matters of breaking the law and regulations should be left to the police for criminal detection. Although we are not conversant with interrogation skills employed by the police, we will earnestly find out whether there is any furthering of personal interest through seemingly legal channels, corruption, conspiracy, transfer of interest and turning a blind eye to unlawful acts. Has this kind of culture commonly found among the officials and business sector on the Mainland spread to Hong Kong? The public has a right to know about it.

And there is the question of cronyism. A while ago I was in my office and I wanted to find a pamphlet published by LEUNG Chun-ying when he stood in the election and the pamphlet was about being united. Originally I wanted to bring a large photo from the pamphlet there to the Chamber, but I forgot where I

had put it. In that large photo, we can see LEUNG Chun-ying waving his hand on an open double-decker bus and the persons standing next to him on his sides were his wife and Mr Barry CHEUNG. I heard Mr Ronny TONG say earlier that his friends in the business sector describe Barry CHEUNG as a political upstart. I think that is really ironic and I have an impression that they are like brothers. Once the elder brother wins, the younger brother will stand to benefit. So Barry CHEUNG was invited to join the Executive Council and recently he was given a second term as Chairman of the Urban Renewal Authority. The appointment was announced just weeks before the HKMEx incident was exposed.

Things like cliques, cronyism and abuse of power for personal gains may be involved and if an inquiry is really conducted, the ICAC may have to step in and examine if there is any evidence of someone abusing his power for personal gains. Ms Starry LEE has also said that the SFC enjoys good credibility and since an investigation is being conducted by the SFC, it would not be proper to disclose certain pieces of information. If we insist on conducting an inquiry in this Council, this will damage the credibility of the SFC. I think she is putting the cart before the horse here and confusing black and white. To her, a donkey may really be a horse. It is precisely because of a problem in credibility that we wish to conduct an inquiry. Ms Emily LAU voiced her strong opinion earlier on why there should be an inquiry. We all know what she was saying. She said that despite the fact that Hong Kong is an international financial centre, the SFC has been acting like Mainland officials. Provided that the person making a request is considered as a friend, and even as the HKMEx is on the brink of bankruptcy, the company is allowed to hang on. But if finally something goes wrong — it could well be that the Bank of China refuses to lend it support — then the HKMEx went bust. It turns out that the SFC could have handled things this way. Now we have an idea what it is like. If that is a misunderstanding, an inquiry will enable the SFC to come out and make a clarification. Although people from the SFC have come to this Council once to explain the incident, they did not explain things clearly enough. At that time they might not have come to a common understanding as to what can be said. Since there is a principle called "if in doubt, leave it out", they chose not to tell all the truth. In view of this, we should conduct an inquiry now.

When people in a family have misunderstandings or if they quarrel, the advice from experts is all misunderstandings should be settled at once and do not let it sit overnight. Is this not the right time? The Government loves to use the

word "in due course" and it always says that things should be done in due course. But I do not think we can afford any more delay. If we really want to defend the liberal market in Hong Kong, and if we want to let the brilliance of this international financial centre radiate, we cannot put up an excuse and say we do not know for how long the criminal investigation will take. The police do not have any idea as to how long this will be completed. Do we have to set a deadline for the police and if they fail to meet it, they should be punished? This Council is not a university and Members are just speaking up for the people.

The Civic Party has just reminded citizens to come out and join the march on 1 July. If I can use the comparison made by the Japanese novelist Hiruki MURAKAMI, that is, between an egg and a high wall — I think many people have heard it before — we are like an egg and very fragile but we want to inquire into a wall to see whether or not it is foul and pestilence as Mr Ronny TONG has described it. Despite the fact that the wall is weathered and battered, we still have it there. We can climb to the top of the wall and have a glimpse of the world beyond. Now this wall has been soiled in foul and pestilence because of all those so-called lawful making of profits and corruption. The people have a right to know. Last time when we discussed the incident in the House Committee, my impression at that time was that many people from the business sector thought that this is a grave problem and there should be an inquiry. But after the meeting, we seemed to hear that the LOCPG had stepped in. My personal conclusion is, people from the business sector decide to obey the order from the LOCPG in the Western District, that is, to make the maintaining of stability the first and foremost task. In the view of the LOCPG, there is nothing serious about this matter, for similar problems are found on the Mainland. Ripples should not be allowed to appear in Hong Kong, let alone turbulent waves. Maintaining the stability should be the prime task.

For us, shall we leave things alone if we do not see or hear them or if we cannot talk about them? Can we pretend that there is no problem and it should be investigated by the police? Can we gloss things over simply because someone has said something? In Hong Kong we practise "one country, two systems", do we have to take orders from the Western District or, to put it nicely, heed its lobbying? We can drop the word "orders" for the time being. The LOCPG may take out bottles of red wine — I have no idea how many bottles — and invite Members to a banquet and persuade Members to join hands to maintain stability here in this Council, in the business world and in agencies like the SFC.

This is another culture and it is suspected that Members are now involved in it. I have no idea whether or not they get any benefits, or they are persuaded or convinced by any sound argument. Members of this Council are all political figures and at the political level, we can invoke the P&P Ordinance to inquire into this matter. Leaving aside the question of clarifying points in criminal law, we can defend the basic tenets of our political ethics.

President, this motion proposed by Mr LEUNG Kwok-hung is a good test case for this Council. I hope it is also a mirror that reflects the extent of truth we can find under this mechanism of the P&P Ordinance. The people of Hong Kong certainly have a right to know in this case.

Thank you.

**MS STARRY LEE** (in Cantonese): The speech made by Ms Claudia MO earlier carried some misunderstanding of the report of the inquiry into the Lehman Brothers incident to which I have referred. I said very clearly in my speech that the report of the inquiry into the Lehman Brothers incident could not find out all the truth, nor could it help the investors. I do not denigrate all the contents of the report.

**MR CHRISTOPHER CHEUNG** (in Cantonese): President, last week there was another news story concerning the HKMEx and that is, the company was filed a claim by the Cyberport for a sum of \$7 million as rents arrears for the office premises it leased. The HKMEx was also requested to surrender the premises leased. The event proves that, as I said initially, I have every reason to believe that the SFC is suspected of being unfair in its handling of the HKMEx affair.

The SFC has stated repeatedly that since the HKMEx does not have any assets of its clients in custody, the company is not to be considered as being in the same league as stockbrokers who are intermediaries. I wish to say that although the requirements for the two kinds of licences are different, there is no difference in the SFC's obligation to protect the interest of investors and to enforce the law in a fair and impartial manner. The HKMEx has a licence to provide automated trading services and it has to comply with the licensing conditions. But surprisingly, the HKMEx could have failed to comply with the requirements over

a long period of time and it did not have money to meet nine months of its operating expenses. On the other hand, since March last year, the company had been deferring its payment of the rents for its office in Cyberport and a total of \$7 million of rents arrears. In other words, the default on payment of rents has persisted for as long as half a year. Does the SFC really know nothing about this? Or does it think that the problem is not serious enough because the company's licence is different from that of the brokerages and so it can sit on the problem?

The financial requirements which the SFC places on the brokerages are really very strict and not only does the SFC show no leniency in such matters but it will also regard brokers like us as thieves. Even if we have made a technical mistake, the SFC will open a file immediately and conducts an investigation. We have even to face the capital punishment of revocation of our licence. All in all, the local stockbrokers are not allowed to go even a step beyond the prescribed limits and they are never as lucky as the HKMEx which can escape any sanction despite long-standing non-compliance. And what is more, the HKMEx can bargain with the SFC and voluntarily surrendered its authorization in exchange for immunity from public censure.

President, although people from the SFC had explained in the meeting of the Panel on Financial Services last month, I would still think that there are a lot of areas that should be clarified. I wrote through the Legislative Council Secretariat after the meeting to the SFC and I urged the latter to explain in detail how it regulated the HKMEx and whether it was aware of the fact that in the case of the HKMEx, the money which was required to settle the expenses always came in the last minute and why the HKMEx was allowed to not comply with the licensing condition for a long time, that is, over the past year.

It is really a serious problem when the Government granted permission for a private company to run a business in the name of an exchange. This is because when the HKMEx goes bankrupt, the impact on Hong Kong's reputation as an international financial centre is far greater than the collapse of any brokerage. It would be a far more serious matter. What is more, at a time when the HKMEx was financially unstable, it still went about soliciting clients and adopted a high-profile image. Why did the SFC fail to see these and why did it not step in and stop it? Just imagine how the SFC can protect the interest of investors.

I think the SFC cannot say that judicial proceedings for the HKMEx have already commenced and it would not be proper to reveal the details, thereby trying to water down and gloss over the matter. The SFC thinks that it can fool the public this way. But it is bound to fail because both the public and the industry do have great expectations for the SFC. The SFC should clarify all the uncertainties and dispel all the doubts. It cannot just say that there has been no prejudice or favour extended, but it must make everyone see that there is actual proof that the SFC is impartial, fair and just. It is only by doing so that the credibility of the SFC can be restored and the industry can regain its confidence in the SFC.

The situation now as I know it is basically similar to the situation previously when Mr James TIEN wanted to invoke the Legislative Council (Powers and Privileges) Ordinance. People in the industry agree that the SFC should be given some more time and on the basis of not prejudicing any investigation into the HKMEx, provide as much evidence as possible to convince us that it has been acting in a fair manner and it has not covered up its shortcomings. The industry hopes that more truths can be revealed and that everyone can be treated equally. Also, I do not wish to see the incident become politicized. As for myself, I will decide whether to take any follow-up action after reading the reply from the SFC to my letter.

Thank you, President. I so submit.

**DR KWOK KA-KI** (in Cantonese): President, I rise to speak in support of invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to inquire into the incident concerning the Hong Kong Mercantile Exchange Limited (HKMEx).

Just now, I heard the speech of Mr Christopher CHEUNG. I thought that he would support invoking the P&P Ordinance. On hearing his speech, I really wanted to rise and say that I support Mr Christopher CHEUNG because I rarely hear him speak so sensibly for a most rightful cause. Later on, I appreciated his woes as he spoke in his capacity as representative of the industry. To put it bluntly, the authorities have been discriminatory because the person in question is Mr Barry CHEUNG, who is the top aide of the Chief Executive. It cannot be wrong to say that he is the top aide of the Chief Executive because he acted as the Chief Executive's campaign chairman, having been appointed to various public



offices. Furthermore, he had been re-appointed as Chairman of Urban Renewal Authority (URA) for two years in violation of the "six-six principle" before the incident was exposed. I am not going to talk about his other public offices. Still less I would wish to discuss anything about the Public Service Commission because these are not crucial. The HKMEx incident will always remain a "Rashomon affair". Just now some Honourable colleagues said that we would never know all the truth. I think that is correct. This is a philosophical question because only God knows all the truth. Frankly speaking, even my wife may not know everything about me, right?

Should this be adopted as the criterion, no investigation is required at all. The police do not have to conduct any investigations and the Courts do not have to conduct any trials. How can we know all the truth? However, the Basic Law has conferred certain constitutional powers on the Legislative Council and we are required to find out the truth to the best of our ability. Regarding this incident, we certainly know that the law-enforcement agency has invoked the powers given by the law to investigate some illegal or unlawful matters. But this is not enough because we still do not know why the law is enforced on some occasions but not on others. On some occasions, the licence is revoked, but it appears that somebody has privilege on some other occasions. As Mr Christopher CHEUNG said, he was boasting and putting on a cocky air even though everybody in the city knew what he had done. President, you also know that I know no acquaintances in the financial sector or business sector. However, a few months ago before the incident was exposed, someone asked me about the incident although I am largely ignorant. "Do you know that Barry CHEUNG is in great trouble?" Then I asked what "great trouble" meant. I was told everyone knew that he was in great trouble for he was heavily in debt. Now even I know what it was all about. Mr Christopher CHEUNG also knows what happened. If the Secretary sitting at the back says that he has no knowledge, it is utterly ridiculous indeed. We may have to say that the Secretary is totally incompetent.

How come the Secretary does not know? How come the SFC does not know? According to the press report, the SFC said that the accounts of the HKMEx are checked on a monthly basis. Now a group of people have been arrested for using false instruments. Some people still argue that the clientele of the HKMEx is small. But we should not forget that the HKMEx aspired to be the largest commodity exchange in Asia or China when it was launched in 2008. It turns out that it could not achieve this goal. Fortunately, it cannot achieve this

goal so that not too many people have suffered investment losses today and Hong Kong may not be notorious again and hit the headline of the *Wall Street Journal*. Otherwise, Hong Kong as an international city in Asia or a financial centre in Asia will be condemned.

It is so absurd that in the HKMEx, some people keep using forged letters of credit to obtain credit and some people keep using dishonest means to prevent the HKMEx from "winding up". Someone asked why? Take a look at the Chairman of the HKMEx, who is it? It is an Executive Council Member and an old friend of the Chief Executive. We all know this. Just now, some Members said that if we look at the photos of LEUNG Chun-ying when he was running in the election, we will see that the most vigorous and the happiest person must be Barry CHEUNG. We all know that he was ready for climbing up the social ladder. He is undoubtedly much more fortunate than LEW Mon-hung who wanted to join the Executive Council but was deceived by the Chief Executive when the latter said he needed to consider it. At a result, LEW Mon-hung is as miserable as a "deserted woman" — a "deserted man", I should say. But Barry CHEUNG was lucky. All credits went to him certainly because of someone's connivance.

I dare not criticize the SFC in a rash manner. In fact, I very much agree with Members' views that the SFC is a very important organization in Hong Kong. In the past, it had made a lot of efforts to maintain Hong Kong's position as a financial centre so that many local and international investors, as well as small investors also considered that they could enjoy a little bit protection because of the SFC. But in this incident, the SFC has "blundered", making us wonder whether the SFC has helped the bigwig and Chief Executive's old friend evade responsibility. We should not tolerate such acts which will directly affect Hong Kong's position as Asia's financial centre. President, what are the selling points of Hong Kong as an international city? There are criticisms that Hong Kong is very fragile now and people's livelihood depends on speculative activities, such as real estate speculation and tourism, which mainly cater to tourists from the Mainland. Hence, regarding the financial industry, which is the final opportunity for Hong Kong to earn a living and our economic pillar, we hope that the Government will continue to enforce the law. Therefore, if the Government does not strive to maintain the financial industry, we would consider that the Government is really incompetent.

In fact, it should be the responsibility of LEUNG Chun-ying rather than the Legislative Council to set up an ad hoc committee, right? If LEUNG Chun-ying

wants to protect Hong Kong's position as a financial centre, he should make a critical decision just like a brave man cutting off his arm — although he has no more arm to cut off, even his feet have been amputated. He should set up an independent commission comprising Judges to investigate the HKMEx. This is the best way to restore his prestige in the hope that the number of people taking to the streets on 1 July will be lower, right? However, instead of doing so, he has chosen the opposite approach. Now, not many Members from the DAB and the pro-establishment camp are in their seats. But they will certainly garner the support of all of their numbers so that the motion on invoking the P&P Ordinance will not be passed in the Legislative Council today. Hence, he is simply doing a disservice to himself as well as Hong Kong as a financial centre. In fact, this independent commission or select committee aims at clearing the name of the SFC and Hong Kong. Only by getting to the bottom can all those involved prove their innocence. What the Government is doing now will only make the public feel that the SFC must have committed malpractice and intended to protect Barry CHEUNG. Otherwise, why is the Government so scared that "paparazzi" is deployed to ensure that the motion is not passed? The public will certainly think that the Government must be up to something. The Chinese people's wisdom is very traditional. The more you try to cover up something, the more people will think that there are problems.

In fact, the Government has dug its own grave. Originally it had the opportunity to do justice to itself through an inquiry by the Legislative Council in a prudent, fair and impartial manner. At least, it will do justice to the Chairman and senior staff of the SFC. Maybe they already wanted to do it for themselves long time ago but were deterred from doing so due to the constant pressure from LEUNG Chun-ying or his team. An inquiry by this Council will let us know who have exerted pressure on the SFC, the SFC has no problem and the problem lies with those who have exerted pressure on the SFC behind the scene. Why do we not adopt this approach? Hong Kong will not be subject to any impact even if LEUNG Chun-ying steps down. However, the good reputation of the SFC should not be tarnished. Hong Kong will not lose its status as a financial centre even if LEUNG Chun-ying ceases to be the Chief Executive because we all know how capable he is. However, we cannot afford any mistake in maintaining the financial order of Hong Kong. As the financial industry is our lifeblood, we are so concerned about it. This is the reason why I call on Members from the business sector to support this motion because it is the most important thing in maintaining our financial centre.

As we all know, the fact that Mr Barry CHEUNG is holding numerous public offices has directly affected our views on this incident. The Government has reappointed him as URA Chairman for two years ..... President, the URA Chairman has countless ties with the business sector, particularly the real estate sector. Many incidents involving insider information and insider trading may occur. I am not saying that they will happen, but they are likely to occur. If a person who is fair, just and not selfish serves as Chairman of the URA, there will not be any problem and we absolutely support it. However, if a person who is in great financial trouble and heavy debt and has to borrow millions of dollars from our former colleague CHIM Pui-chung serves as Chairman of the URA ..... if even the Legislative Council remains silent, we may fail to discharge our duties in monitoring the Government, fighting for the right to know and justice on behalf of the public. We will fail the public.

We all know that Barry CHEUNG has been waiting for someone to save the HKMEX. He has all along covered debts with debts. Perhaps owing to this reason, he requested his boss, Mr LEUNG Chun-ying, to reappoint him as Chairman of the URA so as to gain some benefits. If so, it is more serious and it is the crux of the problem. I think Mr Christopher CHEUNG will not deny that if a security broker, who is in great financial difficulties, was told that there was a post from which he would gain benefits and his life might be saved, he would certainly be willing to accept the appointment. Of course, not everyone has such opportunity or assistance from the rich and powerful. But Mr Barry CHEUNG did.

In my opinion, this incident must be investigated because there are too many secrets that can hardly be explained. Over the past year, messages have been continuously coming from the political and business sectors that the HKMEX is in trouble. For instance, it could not pay rents since March last year. As we all know, the Government is the majority shareholder of the Cyberport and the Government should not be unaware that someone has defaulted on rent payment. It is well known that messages from the Cyberport Management Company will be sent to the Government. Such an important incident, involving an exchange which will have significant impact on the Hong Kong ..... we cannot assume that the HKMEX will close down; on the contrary, we should assume that it will be thriving and become one of the development directions of Hong Kong if it continue to operate.

In fact, I also agree that the development of a commodities exchange is a way out for Hong Kong. But I do not think we should follow this path. To put

it bluntly, the HKMEx has been operating on the "con man" approach. I do not wish to see that the operation of the HKMEx sustained by means of somebody's privilege such as turning a blind eye to the malpractices or something that worries us. So, today's motion is very important. Most importantly, we hope that it can uncover the truth. Just now a Member said that all independent inquiries are costly. I must say that the Legislative Council had better close down if we have to be penny-wise about the amount of public money spent. The police should not exist because their pay is so high that tens of thousands of police officers cost tens of billion dollars. We might as well say that it is a waste of money; why do we need the police? We might as well say that money will be wasted; we cannot get to the bottom through an inquiry.

President, I am a doctor. Let me tell you a black joke. We are all mortal. But what would you do when you are sick and the doctor says that he will not treat you because you will die anyway? What would you do if the doctor says that you need not take an X-ray because you will surely die, sooner or later? According to this logic, I need not see any patients on the ground that it is a waste of money. No wonder the Hospital Authority lacks funding because the Government may have adopted the same way of thinking and thus refused to provide it funding. As all people are mortal, treatment is not necessary. Is it feasible? Fortunately, many Hong Kong people do not think so and fortunately, doctors do not think so. We all consider that it is important to seek the truth, and this is also the bounden duty of the Legislative Council. Although some people will give it up, we cannot.

With these remarks, I support the motion on conducting an inquiry into the incident concerning the HKMEx by invoking the P&P Ordinance. Thank you.

**MR NG LEUNG-SING** (in Cantonese): President, I have reservations about appointing a select committee. Just now some Honourable colleagues mentioned cost-effectiveness because the cost and effectiveness of all select committees appointed in the past are largely out of proportion according to our experiences and the response of society. More importantly, we have to consider how the time of the Legislature Council and public money should be spent in a more sensible manner.

Regarding the explanations of Mr Ashley ALDER, Chief Executive Officer of the Securities and Futures Commission (SFC) at the meeting of the Legislative

Council Panel on Financial Affairs on 3 June, I notice some points mentioned by him. Firstly, the SFC took immediate action in respect of many cases in the past, and the case of the HKMEx is no exception. Secondly, the SFC has not received any instruction or direction from the Government on how to deal with matters relating to the HKMEx at any stage. Mr ALDER also stressed that in the entire process, the SFC has acted independently and will continue to do so in future. According to information currently available, I do not see that Mr ALDER's statement is not well-founded. Neither do I see any concrete evidence that the SFC has handled the case in an unfair manner.

Now, the SFC and the police have started investigating the incident. Intervention by the Legislative Council at this juncture will lead to duplication of efforts and prejudice because the area of investigation of a select committee may be very broad. It may not be appropriate for the Legislative Council to examine the parties concerned when a criminal investigation is underway as this may also lead to unfairness. Hence, if necessary, we should consider whether there are any issues which may require clarification after the investigations by the SFC and the police have come to an end, and we have read the relevant reports and information divulged.

Finally, nothing in Hong Kong as a financial centre and a commercial city should be over politicalized because business is business and politics is politics. If commercial issues are always dealt with in a political approach, and once this becomes a precedent, disputes will go on forever in Hong Kong in future. Under the current situation of Hong Kong, many people who hold public offices are also engaged in commercial activities at the same time. These are their backgrounds. But public offices and commercial activities should be separated. Issues concerning commercial activities should be dealt with according to the established regulations and framework for dealing with commercial activities. And such issues should not be extended to their public offices. It will certainly do a disservice to Hong Kong as a financial centre if commercial activities are investigated by political means. If we do so, I wonder how many select committees will be set up by the Legislative Council in future.

President, I so submit.

**MR CHARLES PETER MOK** (in Cantonese): President, Hong Kong has always been known as an international financial centre. It owes its successful development to a sound legal system, an independent Judiciary and a healthy regulatory regime. The Government attaches great importance to the rule of law and upholds fair competition in the market. Regulation is the key to the success of the financial markets. The financial markets of Hong Kong enjoyed good credibility in the world in the past and are still considered more reliable than the Mainland China because our financial markets are subject to stringent regulation and able to provide a level playing field for all players with transparency.

The SFC has all along given the public an image that it will enforce the law impartially, thereby earning very good reputation in the international community. The SFC is recognized as a stringent regulator which can protect or safeguard the interests of investors. The SFC has always emphasized that it will "maintain a regulatory regime on a par with international standards" and "promote strict standards". However, the terrible scam of the HKMEX recently has enabled the public to see clearly how much integrity and honesty is left of the high ranking public officials of the current-term Government. Furthermore, the industry feels that there is a big question mark hanging over the regulation of the financial markets.

The police have already arrested seven people and pressed charges against four of them. The case involves the use of false instruments and provision of a large amount of false financial information and the amount of money involved is as much as \$40 million. The Legislative Council is duty-bound to follow up and keep a close eye on the case on behalf of the public. I am also very much concerned about whether the regulator has tried to cover up the problem and practised favoritism in the HKMEX incident. Therefore, I support Mr LEUNG Kwok-hung's motion of invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to appoint a select committee to inquire into the incident.

Anyhow, the HKMEX carries the words "Hong Kong" in its name. As a commodities exchange in a famous international financial centre, the HKMEX commenced operation in a high profile, but it seems that it is as fragile as a wall made of styrofoam in a jerry-built project. The SFC, having issued a licence to it, is obliged to ensure that the company has complied with all statutory

requirements. If the HKMEx is not treated in the same way as other companies, the SFC's good reputation and credibility will be tarnished like the Independent Commission Against Corruption, and Hong Kong's image as an international financial centre will be undermined.

According to government information, as of the end of October 2012, there were 19 automated trading services providers authorized to provide trading services. Now that the HKMEx is found to have major problems in financial management and internal monitoring and the SFC, which has not taken any action, seems to have given it a lot of chances to evade responsibility over the past few years, does the SFC enforce the law in the same way in respect of other automated trading service providers?

Did the SFC turn a blind eye and relax its regulation even though hotshots and nobles around the Chief Executive have made blunders in a high profile, thus enabling some people to go through the procedures by means of false instruments and get an impression that they will not get into trouble by making exaggerated entries in the accounts? According to section 98 of the Securities and Futures Ordinance (SFO), the SFC may withdraw the authorization already granted. Although numerous problems have been exposed including those being discussed today, the SFC has not withdrawn the licence so that Barry CHEUNG could tell reporters without haste that he had surrendered the licence to the SFC of his own accord. How could that be?

Now some Honourable colleagues said that we have politicized the issue. Precisely because of some objective evidence, we feel that the issue has simply been politicized. Now the SFC is investigating whether or not the senior staff of the HKMEx have examined some suspected bogus investors with due diligence, and whether there is any relations between those suspected fraudulent transactions and shareholders and staff of the HKMEx. However, has the SFC given any special treatment to the HKMEx in withdrawing the service authorization? Is there any inadequacy in the SFC's monitoring of the financial irregularities of the HKMEx? From another perspective, has the SFC been deceived by the HKMEx in this incident?

For instance, the SFC has the responsibility to ensure that authorized automated trading services providers have sufficient financial resources. But according to media reports, the transactions of HKMEx fell sharply last year,



resulting in financial difficulties. It is suspected that sham transactions were conducted by its members with the purpose of attracting new investors and lobbying existing shareholders to inject capital. The public and the industry have many doubts about this series of events and wonder whether the directors of the SFC had knowledge at that time. The crux of the problem is: How long has the problem been known to the SFC before the incident was exposed? Has the SFC fully enforced the licensing conditions imposed on the HKMEX in 2011 and the Guidelines for the Regulation of Automated Trading Services?

A lot of problems are involved. First, in terms of personnel, the requirement in respect of its personnel under the licensing guidelines of HKMEX is the same as that of the SFO, that is, it has to meet the criteria that "its key personnel are fit and proper persons" and the integrity standard for the licensee. It is specified in the Guidelines that the surveillance and operation should be performed by "competent and qualified persons", and the licensee must make immediate reports on any situation that may affect the integrity and capability of dealers and employees. Has the SFC requested the HKMEX to provide proof of having verified the directors' backgrounds? Why did it fail to find out that the curriculum vitae and academic qualifications of individual staff of the management might be fake, or proof could not be produced, as reported by the media?

Regarding the internal system of governance, the HKMEX, under the licensing requirements, should conduct transactions in a fair and orderly manner in accordance with the approved operation Guidelines of the SFC, in which regulation has been prescribed concerning "record keeping", "surveillance" and "reporting", and so on. The fact that unusual transactions were found in the HKMEX may affect the playing field for other market participants. But according to reports, members are suspected of engaging in false transactions with a view to rigging the trading volume. Has the SFC investigated the matter after discovering it? Has the HKMEX been required to monitor and explain such situations? According to media reports, the HKMEX was allowed by the SFC to increase its working capital in exchange for continuous operation. Is this true? Is this compatible with the practice in the Guidelines?

Furthermore, in respect of capital, one of the licensing conditions is that "HKMEX must have financial resources sufficient for the proper performance of its functions". Firstly, has the SFC made sure that the dealers have complied with the relevant legislative requirements in accordance with these procedures,

including sufficient working capital? In fact, a large amount of capital of unknown origin was injected into the HKMEx before the deadline, did the SFC take the initiative to investigate the source of such false capital and its authenticity? Regarding some bank documents suspected to be provided by the HKMEx, how long has this problem been discovered by the SFC? When did the SFC decide to refer the case to the Police Commercial Crime Bureau? Why did the SFC hesitate to take law-enforcement action or suspend its licence for a long period of time? Is it because Barry CHEUNG has close ties with the Chief Executive? Or because he is a public officer and therefore entitled to privilege? Or owing to pressure from the top echelon, the incident was withheld so that they could be given an opportunity to find a way out? What I mentioned just now can be followed up by the select committee to be appointed under the P&P Ordinance. We need to follow up on all these because the public have the right to know and want to know.

This incident has once again illustrated the importance of press freedom and free flow of information. Thanks to the free media, we learnt about this series of happenings because the media, by conducting a company search, have discovered that these so-called "businessmen" may be "con men", or they may have borrowed money by flaunting the auspice of Barry CHEUNG. However, information that can be dug up by the media is limited and the SFC may not be able to find out the truth on its own. Hence, to uncover the HKMEx's financial supporters behind the scene, and the relations between its financial supporters and the SFC's tolerance of its problematic accounts for almost one year, we have to set up a select committee to inquire into the incident by invoking the P&P Ordinance.

Among various irregularities such as the huge debt suffered by the HKMEx; the injection of billions of dollars of suspicious capital into the HKMEx; and some people are suspected of using false instruments or even engaged in scam transactions, any single one of these is serious enough to rock Hong Kong's status as a financial centre. I hope those Honourable colleagues who will once again veto the motion on conducting an inquiry will really consider the status of Hong Kong as an international financial centre and do not vote against the motion. Given that many Members from the business sector have stressed the importance of Hong Kong as an international financial centre and its competitiveness at previous Council meetings, if they once again "set free" this scandal, then their stances on those two occasions are completely contradictory.

Therefore, they should not tell us that we had better wait for the investigation results of the SFC or the police, or wait for the decision of the Court because our questions are fundamentally different from those investigations. Some Members said that we could not do anything even if we invoked the P&P Ordinance. I have even heard some Members raise the point of cost-effectiveness today. But these excuses are all self-deceiving. If we do not see clearly whether the SFC has dealt with the incident improperly, we will condone the recurrence of such cases. I also wish to see which Honourable colleague would say that the P&P Ordinance is the "imperial sword", which should not be deployed. In this incident, seven people have been arrested and billions of dollars are at stake. I wonder whether it is considered serious by Honourable colleagues.

Just now, I also heard some Honourable colleagues' query about the cost-effectiveness of invoking the P&P Ordinance and some other pretexts. They raised the same pretext in the past, and this time around. If we do not conduct an inquiry by invoking the P&P Ordinance, we will see that the problems behind each and every exposed incident are getting serious. The only reason we can think of is that they want to serve as royalists. But we can do nothing because these are the bounden duty of some Members. What can the public do with those Members? I think the only way to express their views is to take to the streets on 1 July.

President, if some more farces like the HKMEx incident happen again, which are then ignored like the scandals involving some high ranking officials and even swept under the carpet as if nothing has happened despite hours of discussion by us here, then the economy and financial industry of Hong Kong, the so-called our pillars, will soon collapse one after another. Those who do not wish to get to the bottom of the matter are precisely damaging the rule of law of Hong Kong and fair competition in the market. The only reason for their stance is that they want to support and protect LEUNG Chun-ying.

For all these reasons, I hope Members will think twice about on which side they should stand. They should support the appointment of a select committee under the P&P Ordinance to inquire into this matter so that the truth can be revealed to all Hong Kong people.

President, I so submit.

**MR ALBERT CHAN** (in Cantonese): President, I believe this past year is the year in which we have for several occasions in a row within a short period of time moved a motion to invoke the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to investigate the rich and the powerful ever since 1985 when we began to have elected Legislative Council Members. However, many of such motions were voted down. The motion to investigate the "covetous TSANG" was rejected. The motion to investigate "689" "jackal" LEUNG Chun-ying was also vetoed. I believe that the motion to investigate Barry CHEUNG, the so-called "hit man" or "lead horse" of "jackal" LEUNG, will also be negated.

The series of negation of motions has demonstrated the incompetence and neglect of duty of this Council. Birds of a feather flock together. It does not only occur among the rich and the powerful. The dignitaries in the Legislative Council and the dignitaries in the Executive Council — the corrupted dignitaries — can be said as working hand in glove with one another. Wedging solid with the gridlock, we can hardly rely on this Council to achieve the goal of removing it. We but have to rely on the power of the people ultimately. Hence, if we are dissatisfied with the administration, disappointed at those villains colluding together, and fed up with the channelling of interests among the rich and the powerful who act in collaboration to shield one another, then we must take to the streets on the 1 July. Only revolution can change this corrupted and least like ideal situation.

In both the previous and current terms of the Legislative Council, select committees were appointed to investigate incidents during all those years. They might be much less significant compared with the incident of Barry CHEUNG, but relevant committees would always be appointed to carry out inquiries. As for the problem of the Hong Kong Mercantile Exchange Limited (HKMEx), many Members have pointed out that it involved billions of dollars of loans, frauds or criminal commercial activities. I think we should leave it to the law-enforcement agencies for further investigation. On the surface, it seems like a security or financial market problem. Do you know why I feel or opine that the Legislative Council should conduct an independent inquiry? The main point of the inquiry is to protect the fairness and independence of Hong Kong's financial markets, demonstrating to the whole world that in Hong Kong's financial markets none will be allowed — including Executive Council Members, or the Chief Executive's "lead horse" — to compromise its fairness and independence. Therefore, we need to ascertain through an inquiry whether the

political status of that particular person will affect the operation and supervision of any financial institution. In case something happens or goes wrong in the subsequent criminal proceedings that are regarded as unfair, Hong Kong will be brought into disrepute overall if we do not conduct an independent inquiry now.

During last week's debate, I said that Hong Kong as an international financial centre should wake up from its "financial dream" early. It is in fact a nightmare. The people of Hong Kong will continue to suffer if we go on like that. Why is an independent inquiry so important? It is because an independent inquiry can allow all those who are suspected of having violated the law or abused powers for personal gains to come before the public to give clear explanations. They can have an opportunity to speak up under our tough questioning and do justice to themselves. If the people of Hong Kong are asked whether they suspect the HKMEx or Barry CHEUNG has ever made use of their political relationships for personal gains, I absolutely believe that most Hong Kong people hold such suspicions. And those who think that he has sought personal gains and privileges by abusing his power absolutely outnumber those who think he has not.

Barry CHEUNG has earlier said in a high profile that he would issue a lawyer's letter to Allen LEE for libel. We really hope that he will file a writ against him. If this select committee cannot be appointed, at least we hope that this lawsuit can go to court "for a showdown". According to my experience from the 12-year long civil case with LI Ka-shing, there is a characteristic in any libel case. Through the revelation and exchange of information as well as interrogation in court, we will be able to know precisely whether Barry CHEUNG has ever borrowed any money and from whom he has borrowed money and the reason for such loan, and so on. Therefore, I strongly urge him to file a writ. Although I do not have much money, I do not mind giving him a small donation if he is willing to accept it. I can support his civil proceedings against Allen LEE.

A couple of days ago, I was invited to a television programme called *Legco Review* hosted by Allen LEE. He said with excitement during the show that he was looking forward to meeting him in court. He "welcomed with open arms". Mr Martin LEE was also ready to take up this civil case. Therefore, if this incident really ..... However, I absolutely think that Barry CHEUNG will "huddle up" in the end, having made all thunder but no rain. Even if a writ is filed, the whole case may come to a standstill at any given time. It may take 10

years with no progress. Libel cases are very interesting as there may be little progress 10 years after commencement. All facts, justifications and information will not be revealed during the period. In any libel case, the lawsuit is actually not aimed at the defendant. The real political purpose of any such lawsuit is to silence the rest of the people.

Therefore, I urge all media and people not to shut up simply because of being sued for libel. I have seen many similar situations. Whether a lawyer's letter is issued as an advance warning or a writ is really filed for civil litigation, all media and people will tend to "shut up", thus achieving the political goal of those who have initiated the lawsuit in the first place.

President, I would like to come back to the principles and so-called needs of the P&P Ordinance. A few Members, especially Ms Starry LEE, have stressed that the P&P Ordinance is the "imperial sword". It is absolutely a misconception. The P&P Ordinance is part of the terms of reference conferred on the Legislative Council. With the terms of reference, Members are conferred with powers to perform their sacred duties. It means that we can conduct in-depth and open investigations into issues that are of vital public interest with a view to finding out the truths. Only through exercising the powers conferred by the P&P Ordinance can we fulfil our roles as Legislative Council Members or the terms of reference of this Council. If we do not exercise the powers, it is a neglect of duty, just like using some excuses to cover the shortcomings of some people.

Take a look back at all those years and one will see that there were quite a number of select committees appointed by the Legislative Council before and after 1997, including the appointment of a select committee in May 1985 to consider and report on the appropriate measures to be taken to resolve the problems involved in the prosecution and trial of complex commercial crimes as well as the mode of trial. The appointment of a select committee in December 1985 to consider the administration of the Hong Kong War Memorial Fund is another example. As for the select committee appointed in May 1994 to inquire into the Kwun Lung Lau landslip and related issues, I was a committee member. A heavy rainfall at that time caused a building to collapse ..... not a building collapse but the collapse of a wall. It caused a landslip with human casualties. The then Legislative Council appointed a select committee to inquire into the accident as a result. Besides, a select committee was set up in September 1996 to inquire into the circumstances surrounding the departure of Mr LEUNG

Ming-yin from the Government and related issues. It involved the resignation of a government official. The select committee to inquire into the circumstances leading to the problems surrounding the commencement of the operation of the new Hong Kong International Airport at Chek Lap Kok and related issues was appointed in July 1998 with Anson CHAN becoming the target of public criticism. The select committee on building problems of public housing units was set up in February 2000 with the purpose of looking into the "short-piling" scandal.

As a matter of fact, Barry CHEUNG's HKMEx incident can be depicted as a financial "short-piling" incident to a certain extent. It is also a landslip to a certain extent, resulting in the collapse (closing down) of a renowned or significant company in the financial markets. In terms of logical thinking, one is a physical building or slope while the other one is maladministration. The maladministration of the new airport in 1998, for instance, brought Hong Kong into disrepute. The HKMEx incident has equally brought Hong Kong into disrepute, only to end up with more complicated problems involved. I am going to make some analysis at a later stage. Since the substandard piling works of public housing units had undergone an inquiry, why do we not look into this financial "short-piling" incident?

In October 2003, this Council appointed a select committee to inquire into the handling of the severe acute respiratory syndrome outbreak by the Government and the Hospital Authority. In December 2008, another select committee was established to inquire into matters relating to the post-service work of Mr LEUNG Chin-man. In February 2012, we appointed a select committee to study Mr LEUNG Chun-ying's involvement as a member of the Jury in the West Kowloon Reclamation Concept Plan Competition and related issues. The formal name of this committee is too long and I am not going to read it out in detail. At that time, LEUNG Chun-ying was "in rivalry" with Henry TANG. TANG's camp supported the appointment of this select committee due to political causes or political needs. The gravity of Barry CHEUNG's incident or the HKMEx incident has dwarfed LEUNG Chun-ying's involvement as a member of the Jury in the West Kowloon Reclamation Concept Plan Competition. Hence, those who supported investigating LEUNG Chun-ying's involvement should not oppose today's motion. As for the appointment of the most recent select committee in 2013, it is aimed at inquiring into matters relating to Mr Timothy TONG's duty visits, entertainment and

bestowing and receipt of gifts during his tenure as Commissioner of the Independent Commission Against Corruption.

As we can clearly see, the issues that justified the appointment of select committees in the past can be considered as quite insignificant compared with the prevailing problems caused by the HKMEx and Barry CHEUNG. But this Council has endorsed the appointment of select committees to look into the causes of the problem and explain clearly to the public. Systemic deficiencies, loopholes in law or human errors can thus be rectified. In this way, we can do justice to Hong Kong.

Many Members today have used various specious reasons to oppose this motion. They do not want to waste their time because they like to make full use of their time to make money on "property speculation". Am I right? If you want to concentrate on the ups and downs of the property market to make money like Mr CHAN Kam-lam, pocketing tens of million dollars from buying and selling of properties and sparing time for this kind of things, then you should not join any select committee. You should give way to those who are prepared to spend time to do justice to society to conduct the inquiry. In other words, there is only one reason to vote down today's motion, that is, to protect the scandals of LEUNG's camp or the regime of local communists in Hong Kong from being exposed as a result of the inquiry.

Therefore, the chances of today's motion being passed are small, but it is absolutely inappropriate in terms of logic and argument. The HKMEx incident does not only involve a regulatory problem, it also involves many political issues. It gives us an impression that many of the loans are made out of political relations. There are even claims that the LOCPG might have offered help. Has the LOCPG increased through this incident its overall political influence in Hong Kong by asking those who have ever received its assistance to state their political stances? Am I right in saying that you have to return favours after receiving benefits and personal favours? What is the role of the LOCPG in this incident? Has LEUNG Chun-ying personally made any persuasion or indication to offer his help regarding the loans? If we do not conduct an inquiry, the people of Hong Kong will always have an impression that the whole HKMEx incident is nothing but an abuse of power for personal gains and a transfer of benefits among them.



**DR KENNETH CHAN** (in Cantonese): President, LEUNG Chun-ying published yesterday a report on his work for his first year in office. It took me great efforts to read it once — I think many people may not be interested in reading it, or they may think that there is nothing much worthy of their reading — as it is my duty to make comments, however, I have read it through very carefully. I share the view of my colleagues that he is boasting his accomplishments and blowing his own trumpet, and he is very happy with himself. It is because in this so-called report on his work which spans 20-odd pages, there is no mention of governance or the work of the Executive Council or the performance of Members of the Executive Council; nor is there any mention of the incident of Barry CHEUNG.

President, with regard to the attitude taken by the pro-establishment Members just now, I think the public must find it most puzzling. In fact, politicians do not need to put forward too many theories or loads of excuses to reject, on specious grounds, our call for setting up a select committee under the Legislative Council (Powers and Privileges) Ordinance to conduct an inquiry into the incident of Barry CHEUNG.

Mr NG Leung-sing said earlier that business and politics should be separated and that we must not politicize business issues. I very much doubt what these colleagues from functional constituencies, especially those representing the business community or the commercial and industrial sectors, are doing when they sit here in this Chamber. In the panels, when we discuss an array of policy areas and particularly when we discuss issues involving industries and businesses or other economic issues, are we really politicizing them? What did he mean when he said that business and politics were separate issues? Does it mean that only people like us who study politics or international relations or teach politics or are engaging in political studies can sit in this Chamber? Is it how it should be in order to be called professional? I believe it is not.

Earlier on, Mr Christopher CHEUNG spoke up vociferously for the stakeholders in his sector. But then, he flinched after making his comments and followed the stance of the Government by suggesting that we should withhold actions and that we should first find out more about the situation. How could he act like that? He made one step forward and took two steps backward. When such behaviour is laid before the eyes of the people, how can it not deal a blow to the legislature's prestige, popularity and credibility in the minds of the people over and over again? It turns out that those who want to deal a blow to us and who particularly wish to belittle the legislature are none other colleagues in the

royalist camp and pro-establishment camp, or those who claim to be representatives of their sectors or functional constituencies. But what they say often cannot represent their constituents. On the contrary, these directly-elected Members of us or colleagues in the pan-democratic camp who seem to be of little significance but absolutely cherish and attach great importance to Hong Kong's financial system and status as an international financial centre are particularly anxious.

Politicians actually do not need too many theories or reasons. They need only a few things. President, the first thing is ideal; second, they need convictions; third, they need a little bit of logic; fourth, it is best to have some common sense. But judging from the remarks made earlier by the pro-establishment Members in opposition to this motion proposed by Mr LEUNG Kwok-hung today, they seem to lack all these four things. I particularly wish to make mention of Ms Starry LEE. She is a Member of the Legislative Council and a Member of the Executive Council. When I mentioned these Members who concurrently hold two offices in my past research essays, I was never polite to them. I called them political amphibians.

In fact, she has put on two hats or more than two and for this reason, it becomes all the more necessary for her to be detached. She should take a higher, broader perspective in examining the question that we are now handling and discussing, that is, the question about the HKMEx, about Barry CHEUNG, about a former Member of the Executive Council and about whether he has abused his powers for personal gains and whether he is involved in any conflict of interest, which are all important issues. Each and every one of these allegations or things suspected to have taken place is dealing a blow to the core values of Hong Kong and yet, she outrageously said that this is a waste of money. See? The conduct of an inquiry will waste a huge amount of public coffers and we may not necessarily find out what we wish to know upon completion of the inquiry, and after much is done and said, we will end up causing troubles to a lot of people. It is actually very dangerous if these things are said continuously, and to put it in a more polite way, I would say that we see a Member of the Legislative Council who is concurrently a Member of the Executive Council damaging and belittling this legislature of ours, and to put it more directly, she is irresponsible, evasive and wavering in position.

President, what we are handling here is a very solemn and important matter. When it comes to cronyism, there is this concept of "crony capitalism" in academic discussions. Over the past few decades, we have had a lot of studies and discussions focused on the systems in different places all over the world, including mature capitalism. Hong Kong certainly upholds capitalism practised. But what does it mean by "crony capitalism" or economic behaviour under cronyism?

Former Chairman of the Federal Reserve of the United States, Alan GREENSPAN, made a remark in a public hearing of the United States House of Representatives on 30 January 1988. He said, "Crony capitalism is a system where stocks are purchased and loans are made on the basis of association, not economic value." (End of quote) Alan GREENSPAN was trying to tell us that crony capitalism is most destructive. Economic deals, stock transactions or loans are made not on the basis of the economic value of the deal or transaction but on association or connection. It depends on who you know, not what you know; it is not based on what ability you have, what talents you have and what you are good at that people have confidence in you and give you their money for you to invest and manage their finance for them. It all boils down to association. So, what we should consider is whether there is cronyism in this incident, or whether Hong Kong may carry the bad name of crony capitalism and be brought into disrepute by it if we do not carry out a thorough investigation to find out the truth. That would be too bad, because a few months later there might be another international organization criticizing the situation of capitalism in Hong Kong 16 years after the reunification and then the officials would have to go to pains to explain why our competitiveness has declined, why the international community has made less favourable rankings of us, and whether these are caused by structural factors or the external environment.

Hong Kong should be the centre of our consideration. Do Hong Kong people and the legislature clearly know and understand the nature of the problem? We should at least rule out this possibility through an inquiry. If we cannot rule out this possibility, we would have to bear this notoriety and guilt, and if we go on like this, what good will it do to us? Therefore, from the angle of the independence of the legislature and from the angle of the status of the legislature in the minds of the people and the market, we must do it; and from the angle of the confidence of the international community in the Hong Kong economy and their perception on the acceptability and credibility of our economy, we must do it properly.

If an inquiry is to be conducted, what will be the specific directions of investigation? Many Members have expressed their opinions, exchanged views with each other and made criticisms, responses or clarifications earlier on. But it seems that I have not heard any view on how the inquiry should be carried out if it will really be carried out. What questions should be asked and what issues should be dealt with? Let me suggest four questions for Members' consideration: First, will Barry CHEUNG's status as a Member of the Executive Council be a reason for the Securities and Futures Commission to give special treatment to the HKMEx in the arrangements for the surrender of its licence? Second, as the HKMEx incident has damaged the credibility of the Executive Council, is it necessary to review the systems for the appointment and integrity checking of Members of the Executive Council and is it necessary to review the system for the declaration of interests by Members of the Executive Council? Third, did the Chief Executive and the Executive Council intervene in the handling of the HKMEx incident in any way? Fourth, did the Chief Executive know the relevant situation before he appointed Mr Barry CHEUNG to the Executive Council or before he reappointed him as Chairman of the Urban Renewal Authority?

President, Justice Andrew LI carefully reviewed the system for declaration of interests by Members of the Executive Council a few years ago and published a report in May 2012 entitled "Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests". The Report is actually very cordial to Members of the Executive Council particularly when non-official Members of the Executive Council are mentioned. This is consistent with the old times before the reunification in 1997, reflecting an expectation for non-official Members of the Executive Council.

Paragraph 20 of the Executive Summary of the Report says, and I quote, "ExCo Member does not act on his own in relation to ExCo business and is not vested with any executive power or responsibility. Its Non-Official Members are drawn from many different fields in the community. They continue to be involved in the community in various capacities and are usually fully engaged in various fields. The fact that they come from different fields can be regarded as the strength of the Non-Official membership of ExCo. They serve part-time and are not full-time officials. The Independent Review Committee considers that it is inappropriate to subject them to the same regulatory regime for the acceptance of advantages and entertainment as applicable to full-time officials like the Chief Executive, politically appointed officials and civil servants."

However, the Independent Review Committee (IRC) chaired by Justice Andrew LI also recommended that apart from improving the declaration system, statistics should be collected particularly on the declaration of conflicts of interest and such statistics should be made public to enhance our right to know and our understanding of the details. It also recommended that the system should be subject to review at least once every five years in the light of experience to ensure that it meets the expectations of the public in rapidly changing times. This is "Recommendation 35" in Justice Andrew LI's Report. The former Government said that the current Government, or LEUNG Chun-ying's Government, should address this very specific "Recommendation 35" in the Report and keep abreast of the times by meeting the public's expectation for the Executive Council as a whole and for individual Members of the Executive Council.

Therefore, President, I have spoken firstly in support of the setting up of a select committee by the Legislative Council with the powers conferred by the Legislative Council (Powers and Privileges) Ordinance to analyse, investigate, study, and collect evidence on the incident relating to Mr Barry CHEUNG and the HKMEx. Meanwhile, in this course, the Legislative Council should duly perform its role of monitoring the executive authorities, the Chief Executive, as well as the Executive Council and its Members, in order to ascertain whether they have properly responded to the public's increasingly high expectations for the integrity, conduct and moral standard of public officers in a changing society. If not, it would mean that we have failed to perform the role expected of us.

President, I so submit.

**MR CHAN CHI-CHUEN** (in Cantonese): President, as we all know, be it this motion proposed by Mr LEUNG Kwok-hung today on the setting up of a select committee under the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to inquire into the Hong Kong Mercantile Exchange Limited (HKMEx), or the similar motion proposed by Mr James TIEN at a meeting of the House Committee some time ago, both motions can hardly be passed and are even set to be negatived. Such being the case, does it mean that we should not carry out investigations in the face of difficulties? If so, it would have been unnecessary to do a lot of things. It is precisely because the investigations are difficult that it is more meaningful to do so.

Before any inquiry is carried out, we simply do not know whether or not the results will be satisfactory because we do not have a crystal ball to tell. Today, a number of Members have cited past cases as examples in an attempt to prove that the results of inquiry are often far from satisfactory and therefore, the inquiry is not worth it. Their purpose is to convince us that the P&P Ordinance should not be invoked. In that case, we actually should propose a motion on repeal of the P&P Ordinance, for this would be a more practical thing to do.

The motion proposed by "Long Hair" or that by Mr TIEN is regarded as antagonistic to the current-term Government and an "anti-LEUNG" force which is fighting against the "pro-LEUNG" force or "LEUNG's fans". Recently, there are even "LEUNG's tea". What is the difference between "LEUNG's fans" and "LEUNG's tea"? "LEUNG's fans" refer to those people who helped LEUNG Chun-ying in canvassing votes, electioneering or seeking nominations whereas "LEUNG's tea" did not but they can often have tea with LEUNG Chun-ying recently.

Members may think that Members who sponsor or support these motions aim to topple LEUNG Chun-ying, hoping to attack Barry CHEUNG or to force LEUNG Chun-ying to step down by attacking Barry CHEUNG. Whoever unsheathes this imperial sword of the P&P Ordinance is taken to be intending to chop off the heads of other people in the hope of seeing a certain man or organization in trouble or even doomed. I think this mentality is undesirable. Can we think the other way round that the invoking of the P&P Ordinance can prove the innocence of the persons involved?

As far as I remember it, when the incident of the Digital Broadcasting Corporation Hong Kong Limited was discussed some time ago, some Members pointed out that invoking the P&P Ordinance did not mean doing Albert CHENG a favour, for this could actually prove that Bill WONG or the LOCPG was innocent. An inquiry by the Legislative Council might find that political intervention was not involved. This could be a possible outcome, right? However, most Members did not support invoking the P&P Ordinance at that time. In retrospect, we can see that an inquiry by the Legislative Council may really dig out the truth and may help people from the pro-establishment or pro-government camp.

This motion today is not a vote of no confidence in Barry CHEUNG. Nor is it meant to put Barry CHEUNG to trial. I understand that many Hong Kong people wish to know what will eventually happen to him and how destitute he may eventually end up. But to many members of the public, their utmost concern is whether the Securities and Futures Commission (SFC) had, in monitoring the operation of the HKMEx, accorded equal treatment to all, and whether it was fair to allow the HKMEx to surrender its licence of its own accord. Insofar as these questions are concerned, we cannot find the answers from the police investigation, and if an investigation is carried out by the SFC itself, it would be all the more impossible for us to find out the answers to these questions.

A number of Members are opposed to this motion. One of their reasons is that, just as Ms Starry LEE has said, an inquiry by the Legislative Council will impede the current investigation. I do not know what she meant when she said that the current investigation would be impeded. Does she mean that the different investigating bodies will vie with each other for certain evidence? Does she mean that when different investigating bodies wish to summon a certain person to assist with the investigation, that person may not be able to entertain all such requests at one time and the progress of investigation may hence be affected? I really do not understand what she means.

In response to the comments made by a member of the DAB who said during an interview some time ago that an inquiry by the Legislative Council would affect the criminal investigation, I wish to point out that be it an investigation carried out by the SFC, the police, or this Council if the P&P Ordinance were invoked successfully, all would be independent investigations. The SFC and the police issued a joint statement on 29 May which said, "The SFC and the Commercial Crime Bureau have respective statutory duties and responsibilities to prevent and detect criminal offences under the Securities and Futures Ordinance and the Police Force Ordinance. Both organizations have independent functions ..... These functions are complementary to each other and play an important role in protecting the integrity of the financial markets in Hong Kong."

I do not understand why colleagues of this Council have failed to see this very simple point. Even though two organizations are conducting investigations at the same time, or even if investigations are carried out by three organizations if this motion is passed today, we would be performing our respective roles and our functions could be complementary. Of course, the investigations may

possibly — and I stress may possibly — overlap in certain aspects but they will actually focus on different issues of concern respectively.

Moreover, there are also other reasons of opposition. Some people rashly put forward reasons which they consider valid and beat around the bush. Their arguments are not consistent and reflect a lack of logic and principles. For example, a Member said that as this Session is drawing to a close soon, this Council will be in recess when the select committee is formed and so, the inquiry by this Council would only lag behind that of the SFC or the Commercial Crime Bureau.

In response to this view, I wish to point out that firstly, investigation is not a game in which the quickest wins, not to mention that it is unknown as to when the two current independent investigations will be completed. There is also the view that if the two organizations said that their investigations would be completed in September, we can make a decision only then on whether or not to conduct an inquiry. Of course this is not going to happen because the investigating bodies do not know and cannot tell exactly when their own investigation will be completed. They carry out the investigation at their own pace, not knowing who is faster and who is slower.

I think the decision on whether or not to conduct an inquiry should not hinge on the results of the other investigations that are being carried out now. If, after the completion of the other investigations, it is again proposed that the P&P Ordinance be invoked to conduct an inquiry but other people oppose any further investigation because other investigations have been completed and the results of the investigations are fine, it would mean that we cannot conduct an inquiry before others carry out theirs or when other investigations are being carried out or after other investigations are completed. In short, we simply cannot carry out any inquiry.

I very much support the motion proposed by Mr James TIEN at a meeting of the House Committee some time ago, but I do not agree with some colleagues who opined that an inquiry conducted under the P&P Ordinance will damage the credibility of the SFC. We should think the other way round, for this is precisely the way to uphold the credibility of the SFC and to allay the concern of Hong Kong people and even that of the international community, thereby restoring their confidence in the SFC. Frankly speaking, the credibility of the



SFC has already been injured. People have a lot of questions in their mind, but it is difficult to gauge the extent of the damages done.

However, are there remedies? I think one of the ways is to invoke the P&P Ordinance to conduct an inquiry because the SFC cannot prove its innocence by itself no matter how its investigation is conducted. This is one point. Second, the police investigation only focuses on whether any person had committed an offence. Hardly can it explain many grey areas and there is no way for the public to find out about the process of police investigation.

Indeed, I believe many Members do not wish to see that Barry CHEUNG or LEUNG Chun-ying is doomed but they do wish that Hong Kong's reputation as an international financial centre is upheld. Therefore, Members of functional constituencies, especially the commercial and financial services functional constituencies, actually should have supported Mr TIEN's motion the other day. If they have repeatedly and clearly thought about it now, they should throw weight behind this motion of "Long Hair" today. When did the SFC know that the HKMEX had problems? When did the SFC take actions? What actions did the SFC take? Why did the SFC take actions at the time? We owe the public answers to these questions.

Some Members said that we can ask questions at meetings of panels. I believe Members have all attended meetings of panels before. Even if we put questions to Permanent Secretaries, Directors of Bureau or the Chief Executive, they only give answers perfunctorily. We need real powers to require people who are here to answer questions to give a full account of what they know without worries and legal liability. I think the panels are not only "toothless tigers". They are even regarded as "feeble cats", as people who attend these meetings basically do not need to tell what they know at the meetings.

When Mr TIEN proposed his motion some time ago, a number of Members first appeared to be enthusiastically supportive of the motion but after lobbying and explanation by the Government and the SFC, they came forth to say that an investigation would be unnecessary because they considered that the Government and the SFC had given clear explanations and so, they did not support the motion proposed by Mr TIEN at the meeting of the House Committee. If the explanation given by the Government and the SFC is sound and valid, they should tell the public the reasons, in order to prove that the SFC is innocent. The public will then realize that the SFC is actually doing a very good job and

that the SFC has been wronged. They should come forth and produce the evidence to explain everything.

The public now have the impression that this Council has tied its own hands. I said in my speech on that previous occasion that the motion was very good, for it reflected the difference between the royalist camp and the pro-establishment camp. The royalists oppose just everything. So, I will not call Mr TIEN a royalist in future.

Even if this motion today is negated, Members should not feel happy about it for the time being. LEUNG Chun-ying said that policies will be "rolled out once they are ready". We already suggested this morning that the Government actually needs not write the Policy Address or the Budget because once the Government has a policy proposal in mind, it should immediately seek funding for work to be carried out, so that resources can be provided and effectively utilized right away to spare the public a wait of six months. But there is another problem — it is "Long Hair" who told me this — the problem is that the scandals of LEUNG Chun-ying's Government are indeed being "revealed one after another once they are ready". Even if the Government succeeds in making remedies for this scandal, it can hardly find remedies for the next or other scandals.

What we are doing to tie our own hands in this Council is there for all Hong Kong people to see. One of the main objectives of this debate today is to make Hong Kong people understand that putting up struggles inside this Council is not of much use and so, we must take part in struggles outside this Council. The Occupy Central movement aside, there is also the 1 July rally this year, and I urge everyone to come forth to tell all Hong Kong people, the Hong Kong communist regime and the communist regime in China our discontents with the current Government, with the representative assemblies and with the royalists. The number of participants in this year's 1 July rally will be an indicator for the stepping down of LEUNG Chun-ying. Will there be 500 000 or more participants, and "after the party", how many people will stay behind to give a preview of the Occupy Central movement? All these will be the indicators. The Government and the royalists wish to cool down the situation but their remarks and performance have nevertheless appeared to be heating it up.

Therefore, here, I urge Members and pro-establishment Members who still have conscience and who cherish the powers of this Council to support this

motion proposed by Mr LEUNG Kwok-hung today to enable this Council to set up a select committee under the P&P Ordinance to inquire into the HKMEx incident.

I so submit.

**MR JAMES TIEN** (in Cantonese): President, you must have noticed that I have seldom stayed in this Chamber for so long to listen to a motion debate. I have heard the views expressed by a number of Members on this issue, and I have purposely waited until now to express my own views.

President, it all started from the meeting of the Panel on Financial Affairs held in the morning of 3 June. The meeting was chaired by Ms Starry LEE who is the Chairman of the Panel, and Mr Ashley ALDER of the Securities and Futures Commission (SFC) was invited to attend the meeting. During the meeting, I was not the Member who asked the most questions as many Members also raised questions enthusiastically, including functional constituencies (FC) Members who represent the business sector as well as other directly-elected Members. I listened to all their questions and the answers given to them. I found that Mr ALDER's answers were either "I do not know" or "I cannot say anything". I found it very strange as to why there were so many things that he could not tell us. If he did not know anything about it, he could simply say that he did not know. If there are so many things that he could not tell us, how can we do justice to the SFC?

The SFC said that it is now investigating the Hong Kong Mercantile Exchange Limited (HKMEx). I think what the Legislative Council, members of the public, the business sector or international financial institutions wish to know is not how the SFC will investigate the HKMEx, but why its investigation has come so late. Did the SFC refrain from carrying out an investigation even though it was long aware of the problem, as alleged by Members repeatedly? As Mr Christopher CHEUNG has said, small brokerage firms which are short of funds will have their licences revoked immediately without being inquired of the reasons. Did the SFC actually make enquiries about the conditions of the HKMEx? It is also said that the HKMEx had sufficient capital at the end of the month and it would be short of funds only at the beginning of the month. What is the reason for this? In other words, the HKMEx might have secured funds to

meet the capital requirement at the end of the month but the funds would be transferred away from HKMEx a week later early next month. If this happens on a continued basis, everyone knows that the funds are not the company's real capital but only loans taken out to meet urgent needs. Many companies may do the same thing. When they do not have sufficient funds to pay their employees, the boss will take out loans at the end of the month to meet the expenditure on payroll and repay the loans early next month. But this will arouse doubts about the health of the company. If that is really the case, why did the HKMEx, just as the Secretary said earlier on, surrender its licence only after much delay? But when the incident was first brought to light, it seemed that there were two stories: one was that the licence was revoked and the other was that the licence was surrendered.

I think the SFC's status in the business sector and the international community is equivalent to that of the Independent Commission Against Corruption in the minds of the general public. Both enjoy a relatively high status and their work commands the trust of the people. While the company involved in this incident is not a listed company, it is a licensed exchange for trading of commodities. Is the SFC's handling approach considered unfair? We have the feeling that the community does think that the SFC has acted unfairly. We may not know what is true and what is false for the time being, and perhaps the SFC did not act unfairly but when we asked so many questions and Mr ALDER's invariably answered "I cannot say anything" in the Panel on Financial Affairs, I think that he appeared to know something that he could not disclose for unspeakable reasons. Perhaps he actually wanted to say it, just that he could not do so.

In view of this, we should think about ways to make him tell us the inside story. Members of the Liberal Party and I myself absolutely do not act rashly, and we are absolutely not as agitated and impulsive as Mr LEUNG Kwok-hung who demands that the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) be invoked to deal with all issues indiscriminately. However, under the current circumstances, I agree that the P&P Ordinance should be invoked to conduct an inquiry. This may enable Mr ALDER to tell us many things that he originally could not disclose, and what he would say may not necessarily be political because when he replied to other Members on that day, he said that this incident absolutely had nothing to do with the Government. He removed the suspicions on the Secretary by making it clear that he did not act

under the instruction of the Secretary or the Financial Secretary or the superior of the Financial Secretary — the Chief Executive. He explicitly stated at the time that this incident had nothing to do with the Government.

If that is the case, why is the Government or Secretary Prof K C CHAN so worried about invoking the P&P Ordinance to investigate the SFC, so that Mr ALDER can be free to tell us many details? On the other hand, the SFC is a huge organization. Its management includes the Chairman, the Chief Executive Officer, Executive Directors and Senior Directors, and in the company's structure there is also a large number of employees. Have the subordinates done something or failed to do something without the endorsement of the Chief Executive Officer or without the Chairman knowing it? In order to maintain the credibility of the SFC, I hold that the Legislative Council should inquire into this incident. When the inquiry has clearly found out what actually happened, the position of Hong Kong as an international financial centre can be upheld. I do not think that this will make things too political, unless the Government has a guilty conscience in which case many people may not wish to see an investigation into this incident. The Government made the utmost effort to stop us from probing into this incident and as a result, a number of FC Members from the business sector who did ask questions that day and tended to support invoking the P&P Ordinance to inquire into the SFC at first were eventually persuaded by the Government that an inquiry would be unnecessary. I certainly wish to find out the reasons behind this.

Subsequently, at the meeting of the House Committee on 7 June, a number of colleagues, especially Members of the Business and Professionals Alliance for Hong Kong (the Alliance) said that the Government and the SFC had met with them and it was on around 4 to 5 June that they were persuaded to withdraw their support for conducting an inquiry. They said that since the SFC is investigating the HKMEx, we should wait until the SFC's investigation is completed and if there are still problems, a further investigation can be carried out. Ms Starry LEE also said this earlier on.

President, I have been a Member of this Council for many years. In the past when the P&P Ordinance was invoked by the Legislative Council to conduct an inquiry, there were many examples of other independent organizations conducting their own investigations in tandem. There is nothing special about this arrangement, and it is a viable option. Of course, some people may say that an inquiry is costly. But it is the duty of the Legislative Council to conduct an

inquiry, just as what we did in the Lehman Brothers incident or other incidents. I think we should not refuse to conduct an inquiry on the ground of the huge costs to be incurred. But I agree with the view that as we are close to the end of the Session, Members and the Secretariat are very busy and if a select committee is really set up under the P&P Ordinance to conduct an inquiry, can we cope with the workload thus generated? This is actually quite a valid point.

Subsequently, after the meeting of the House Committee I raised a question with other Members. I said that since the Government's lobbying was so effective in that it could successfully persuade the several Members of the Alliance and allay their concern, why did the Government not tell the public its justifications or present the same arguments again at another meeting of the Panel on Financial Affairs to persuade other Members? As the media is present during meetings of the Panel and the meetings may also be broadcast live on television, it would give the Government a very good opportunity to convince all Hong Kong people that there is nothing wrong with this incident. The Government has not done this so far. It is already 26 June today. The last meeting of the Panel was held on 3 June whereas the last meeting of the House Committee was held on 7 June. After the Government succeeded in persuading the 34 Members to oppose my motion before that meeting of the House Committee, it has not made new remarks on this incident; nor has it offered any new explanation. Not even its old arguments have been made public, that is, the arguments with which the Government successfully persuaded Mr Abraham SHEK and several other Members of the Alliance on 4 and 5 June. Secretary Prof K C CHAN has not had a chance to give a detailed reply so far. As he is going to speak later on, perhaps he can take the opportunity to give an explanation on this incident on behalf of the Government, so that we will know the arguments used by the Government to convince the several colleagues of the Alliance on 4 and 5 June. I hope that the Secretary can explain this to us by all means and we will see if his explanation can allay our concern as well as that of members of the community.

All in all, the Liberal Party considers that as the incident has developed to the present state, the Government has nothing new to say about it; nor has it failed to do anything that it can do. The situation now is the same as that on the day when I proposed the motion. I had the support of colleagues in the pan-democratic camp back then, and what happens now is just the other way round. At the beginning of the meeting Mr LEUNG Kwok-hung asked for my view on the chances of this motion being passed. I said that since my motion could not be passed by a majority vote in the House Committee even when the

vote was not taken separately, I think it is very difficult for his motion to pass today given that separate voting will be in order. In spite of this, this motion still has to be proposed for debate by Members and whether or not it can ultimately be passed is another matter. I hope that the Secretary can give a response later and tell us why he considers it unnecessary for us to inquire into this incident.

Lastly, President, with these remarks, the Liberal Party supports the motion proposed by Mr LEUNG Kwok-hung.

**MR ANDREW LEUNG** (in Cantonese): President, as the incident of the Hong Kong Mercantile Exchange Limited (HKMEx) involves a Member of the Executive Council, we are all very concerned about it. At the meeting of the House Committee on 7 June, we discussed the motion put forward by Mr James TIEN who proposed the setting up of a select committee and invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to inquire into the HKMEx incident. At the meeting, 65 Members voted in a division, and the motion was eventually negated with 30 votes supporting it and 34 votes opposing it. I, being the Chairman of the House Committee, did not cast a vote in accordance with the established practice. But the other six Members of the Business and Professionals Alliance for Hong Kong (the Alliance) unanimously cast opposition votes which had a decisive effect. Some people subsequently criticized us for not having an independent position. This is obviously not true. Today, I wish to take the opportunity of this motion debate to state the position of the Alliance.

President, the Alliance is a political party that faces the public. We know very well that we would absolutely win much applause politically if we voted in support of the Legislative Council invoking the P&P Ordinance to conduct an inquiry. We know all the more clearly that we would face political attacks from our rivals if we voted against it. It is precisely because our several votes are so critical that the Alliance chose to cast opposition votes in the hope that we can find out the truth as early as possible and subject the persons involved to legal sanctions as soon as possible.

The Alliance is committed to promoting the economy and the overall development of Hong Kong. We are keener to find out the truth about the HKMEx incident than anyone else. We understand that the public and some

colleagues can read from newspapers every day that the media has raised a lot of questions. But without the support of solid evidence and justifications, we cannot rashly invoke the P&P Ordinance to conduct an inquiry.

We also understand that some organizations which are regulated by the Securities and Futures Commission (SFC) are dissatisfied with the transparency of the SFC. They even think that the SFC has engaged in black box operation and acted unfairly. But these are individual issues that should be handled individually. If we are unhappy with other issues, we should resolve them through another channel. Like colleagues in the Legislative Council who are in this Chamber, I have endeavoured to enhance the transparency of the SFC in recent years. Therefore, I do not think that there is a need for us to make use of this incident to kill with a borrowed knife by employing political means.

Moreover, the SFC and the Commercial Crime Bureau (CCB) of the police are now investigating this incident. Over the past few days, the police have arrested a number of people involved. I hope the relevant authorities can speed up their investigation and further make public the relevant actions taken.

Under the P&P Ordinance, the Legislative Council and its standing committees may summon any person to give evidence at meetings or request inspection of relevant documents and records and even compel attendance by specified persons by a warrant. In other words, this is an extraordinary power that should be exercised only in extraordinary circumstances.

President, since the enactment of the P&P Ordinance in 1985, we have conducted an inquiry on eight incidents only. It reflects that this power is exercised with great prudence, or else it would not be worthy of being dubbed as the "imperial sword".

President, the Legal Adviser of the Legislative Council has pointed out that no statement or admission made by a person in answering a question put to him in any proceedings conducted pursuant to the answering to a summons or in complying with any order made in any such proceedings, is or can be admissible as evidence against that person in proceedings for any offence. In other words, even if we invoke the P&P Ordinance to conduct an inquiry, we cannot provide more evidence in court for law enforcement and on the contrary, we may even impede the investigation being conducted by law enforcers.



Therefore, since the law-enforcement agencies have started their investigations, I hope that we can first allow them to complete their work expeditiously. Furthermore, if the Legislative Council invokes the P&P Ordinance to inquire into the incident, the details and confidential information involved in this incident would inevitably be made public and worse still, a professional inquiry may even degenerate into a public trial on the Internet and a political trial. The HKMEx incident involves a lot of professional knowledge and not all Members of this Council can participate in the whole process; nor can they ask in-depth questions and follow the clues to find out the truth. We are all the more concerned about possible leakage of confidential information when the persons concerned are questioned by the Legislative Council, and this may even enable law-breakers to escape punishment by law. This will have far-reaching consequences and must not be handled rashly.

We understand that members of the public do hope to find out the truth. This is why the Alliance had particularly listened to the views of all sides before the vote was taken in the House Committee. We also took the initiative to meet with the SFC and the Secretary, in order to find out more about what actually happened. We conducted in-depth and detailed discussions on the incident, thoroughly considered the proposals put forward by all sides and carefully gauged their consequences, especially the impact on Hong Kong as a whole in the long term. We weighed the pros and cons and consulted the industries, including the Federation of Hong Kong Industries which I represent.

In fact, before the vote was taken, the five major business chambers had come together for a meal, and none of them had asked their representatives in this Council to vote for the motion. We consider it more reasonable to wait until the SFC and the CCB of the police have completed their investigations. Then, the Legislative Council can, based on the relevant information, decide whether or not the P&P Ordinance should be invoked to conduct an inquiry.

The Alliance considers that even though we are all keen to find out the truth about this incident, we should work step by step in line with the standard of how we should act in a modern society. Today, the Alliance will oppose invoking the P&P Ordinance to conduct an inquiry on the same principle.

President, I venture to say that the Alliance's voting preference today will induce a lot of criticisms against us. The criticism that was hurled at us before,

accusing us for not having an independent position, will become rampant again. However, these criticisms will not deter us from upholding the principle of acting in the long-term interest of Hong Kong. We will not change our position in order to gain political clout. We voted against the motion last time and we will vote against this motion today, unlike the Member who sponsored the motion on invoking the P&P Ordinance last time but left it to Mr LEUNG Kwok-hung to propose it this time around.

Hong Kong is a society where the rule of law prevails. Law-enforcement agencies and the Judiciary have all along handled every case in a stringent, fair and impartial manner. From a political viewpoint, we can stand the test. Politics should not intervene in law enforcement and the Judiciary. We understand that the public would like us to bear this point in mind and we must refrain from gaining political chips to the neglect of judicial fairness.

With these remarks, President, I oppose this motion on behalf of the Alliance.

**MR ALAN LEONG** (in Cantonese): President, we have the separation of powers among the executive, legislature and Judiciary in Hong Kong. This is why we know very well that when the Legislative Council exercises monitoring over the other two branches, we know when to act and when to stop. This is also the reason why the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) clearly provides that when we conduct hearings and exercise the powers of the P&P Ordinance, the evidence collected cannot be used elsewhere. For this reason, I think colleagues do not have to be over-worried, saying that it would be undesirable if we step out of line and hence render the criminal investigation affected.

President, you may have noticed that we have recently conducted hearings from a value-for-money perspective on the effectiveness of work of the Independent Commission Against Corruption (ICAC) in curbing corruption which is covered in Report No. 60 of the Director of Audit. When former Commissioner of the ICAC Timothy TONG was summoned to the hearings, the Director of Public Prosecutions of the Department of Justice wrote to us as if the Public Accounts Committee (PAC) does not know the rules and may step out of line and hence render the criminal investigation affected. Of course, under the leadership of our Chairman, Mr Abraham SHEK, we rebuked the Director of

Public Prosecutions for making such an unnecessary act. In fact, we have concluded the hearings on the relevant evidence concerning Mr Timothy TONG. Therefore, I, think we basically should not belittle ourselves, thinking that we do not know how to strike a balance or wondering whether we should collect evidence.

In the past when this Council invoked the P&P Ordinance to conduct an inquiry, we had done it in many ways. For example, we could collect evidence from certain documents in camera and after writing the report, if we knew that there would be criminal prosecutions, we could temporarily withhold the report. This is actually very common. With regard to the maritime disaster of Lamma Island recently, Justice Michael LUNN deleted the paragraphs relating to the criminal liability of the two captains before publishing the report for the same consideration. Even though the separation of powers means that the executive, the legislative and the Judiciary exercise checks and balances on one another, we do understand that we cannot step out of line and when we should not act *ultra vires*, we know when to act and when to stop. Therefore, the concern that we may collect evidence that we should not have otherwise collected or our inquiry may affect other criminal investigations is, I think, unwarranted.

President, the financial problem involving the Hong Kong Mercantile Exchange Limited (HIMEx) has aroused concern among all Hong Kong people. Even though the Chairman of the HKMEx, Barry CHEUNG, has resigned from all his public offices, members of the public still have a lot of questions about the handling approach taken by the Securities and Futures Commission (SFC) and LEUNG Chun-ying.

"It takes more than one cold day for the river to freeze three feet deep." There were actually early hints of problem in the operation of the HKMEx before it came to the present state where it has to surrender its authorization. It was reported on television that the HKMEx has since March 2012 defaulted on the payment of rents and owed up to \$6.76 million of rents and management fees as at May 2013, and the amount owed by the HKMEx will even accumulate to \$7 million this month. Mr CHAN Kam-lam, a Non-Executive Director of the SFC, once told the reporter in an interview that the SFC had all along been paying attention to the financial problem of the HKMEx. He said that the HKMEx had failed to meet the financial requirement for a number of times, just that the HKMEx always managed to obtain funds before the deadline and that the SFC had issued warnings to the HKMEx on several occasions, though Mr CHAN

subsequently clarified in the Panel on Financial Affairs that it was not true that the SFC already knew all the problems of the HKMEx a year ago. But anyway, since Mr CHAN did not deny the fact that the SFC did issue warnings to the HKMEx, this has reflected that the SFC was long aware that the HKMEx had serious problems in its operation.

That the HKMEx chose to surrender its authorization for providing automated trading services on its own initiative shows that the financial problems of the HKMEx have already developed to a state beyond rescue. Even the police have to intervene in it and investigate whether anyone has committed commercial crimes, such as forgery of documents. Now that the incident has developed to the present state, the public cannot but have these questions in their minds: When did the SFC find out that the HKMEx had problems? If the SFC was aware of all the problems of the HKMEx a year ago, did the SFC carry out more in-depth investigation into the HKMEx? Was the SFC given instructions by senior financial officials or even the Chief Executive which influenced its investigation because of the special status of the Chairman of the HKMEx, Barry CHEUNG? President, these questions in the minds of the people are reasonable doubts. It is necessary for the Government and the SFC to give an explanation to the public, and this Council has the power to conduct an inquiry into the persons involved in order to find out the truth for Hong Kong people.

President, Hong Kong managed to become an international financial centre because we have a sound legal system and a clean government with integrity. But since LEUNG Chun-ying has taken up the office of the Chief Executive, the integrity of the SAR Government has continuously been open to question. Being a statutory body responsible for monitoring operators in securities and futures trading in Hong Kong, the SFC has to command absolute confidence among Hong Kong people and overseas investors in the operation of the SFC. But in this incident, the SFC has not taken the initiative to suspend the authorization of the HKMEx in a whole year since it was aware of the operational problems of the HKMEx. On the contrary, it nevertheless allowed the HKMEx to surrender its licence on its own initiative when the HKMEx found that no further procrastination would be possible. It is indeed easy to arouse doubts about whether the SFC has exerted its utmost to ensure that the HKMEx has operated in full compliance with the statutory requirements or given preferential treatment to the HKMEx because its Chairman, Barry CHEUNG, was in prominent positions. Moreover, Barry CHEUNG has all along been the right-hand man of LEUNG Chun-ying. From his position as the Chairman of

LEUNG Chun-ying's election campaign office when the latter was running in the Chief Executive Election last year to his appointment to the Executive Council as a Non-official Member after LEUNG Chun-ying took office, it shows that Barry CHEUNG has a special position in LEUNG Chun-ying's team. This has naturally made people think about whether LEUNG Chun-ying had directly or indirectly influenced the investigation work of the SFC and hence enabled the HKMEx to pull through or be put on "saline drip" until its surrender of licence now.

President, these doubts revolving around the SFC will undermine investors' confidence in the SFC and become a blot on Hong Kong's position as an international financial city. Therefore, this Council absolutely has the obligation and responsibility to exercise the investigation powers conferred on us by the P&P Ordinance, endeavouring to find out the truth and allay public concerns. The purpose of authorizing the select committee to invoke the P&P Ordinance is to enable the inquiry to be conducted smoothly. During the inquiry conducted by the PAC on the findings of the Director of Audit's report some time ago, Timothy TONG already demonstrated in person how a witness can make use of all sorts of excuses to refuse to answer Members' questions if there is no authorization by the P&P Ordinance to summon witnesses. The PAC eventually had to axe the hearings. However, with the authorization of the P&P Ordinance, we can ensure that the hearings are conducted meaningfully, rather than hearing meaningless replies over and over again. In fact, this motion was already proposed by Mr James TIEN in the House Committee before. It shows that not only members of the public who are represented by the pan-democratic camp but also the business sector which is represented by the Liberal Party is concerned about the damages done by this incident to Hong Kong's image as an international financial centre. This is proof of the need for this Council to set up a select committee. It was only because some pro-establishment Members, who might have received the instruction of the Government or even the LOCPG, had quickly returned to their side that the motion was negated in the House Committee.

(THE PRESIDENT'S DEPUTY, MR ANDREW LEUNG, took the Chair)

Deputy President, there are only two reasons for the pro-establishment camp to oppose the setting up of a select committee. First, the law-enforcement agencies are currently investigating the HKMEx and so, this Council should not

stick its oar in it. I have already pointed out that this reason is misleading. The second reason is that there has not been any substantive evidence to prove that the work of the SFC had been influenced by LEUNG Chun-ying, or the SFC, in handling the case of the HKMEx, did not recover the licence of the HKMEx because of the status of Barry CHEUNG. This reason is all the more baffling. This Council has to conduct an inquiry precisely because it has noticed that the public have doubts about the work of the SFC. This is why this Council has to conduct hearings to collect evidence. If all the evidence is put before the eyes of the public today, why should it be necessary for this Council to conduct an inquiry or whatsoever? Therefore, if these Members are asking that evidence must be produced in order for an inquiry to be conducted, it means that this Council should never exercise the power of investigation. This is downright sophistry.

Deputy President, there have been reports in the media about the Chief Executive being aware of the financial problems of the HKMEx before he reappointed Barry CHEUNG as the Chairman of the Urban Renewal Authority (URA). If so, LEUNG Chun-ying would have to explain to the public why he, though knowing that Barry CHEUNG's company was in trouble, still acted against the "six-six" rule and made an exception by giving a green light to the reappointment of Barry CHEUNG as the Chairman of the URA and allowing him to remain in office in the Executive Council?

Deputy President, former Chief Executive Donald TSANG was criticized for practising cronyism. Now that LEUNG Chun-ying has taken cronyism to new heights. LEUNG Chun-ying does not care about the problems of his team members, for anyone can be appointed to public office so long as he or she is close to him. This has ultimately resulted in this "hell team" of LEUNG Chun-ying, which is unbearable.

Deputy President, be it members of the public, the business sector or international investors, they all have questions about the HKMEx incident. If the pro-establishment Members once again impede this Council from exercising powers which are duly possessed by us, various sectors of the community will be disappointed with this Council again, and the HKMEx incident may forever remain a question mark. However, in a Legislative Council consisting of functional constituencies, these views basically cannot be reflected in the voting results of this Council. Deputy President, today's motion will very likely be negated as expected, but the voting records can become historical documents

for future reference. I believe Members who know only to dance to the "magic flute" of the LOCPG and the Government in casting their votes will be held accountable to the public one day.

With these remarks, I support the motion.

**MR JEFFREY LAM** (in Cantonese): Deputy President, I do not support invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to inquire into the surrender by the Hong Kong Mercantile Exchange Limited (HKMEx) of its authorization to provide automated trading services and related issues.

The Securities and Futures Commission (SFC) is a statutory body tasked to regulate the operation of the securities and futures markets in Hong Kong. The SFC has withdrawn the licence of the HKMEx because the SFC found problems with this company. The SFC has also initiated an investigation into suspected irregularities in the financial affairs of the HKMEx and referred the case to the Commercial Crime Bureau (CCB) of the police for follow-up. Since these two professional bodies, one being the regulator and the other a law-enforcement agency, have been investigating this incident, I think this incident should be handled by them first and intervention by the Legislative Council is inappropriate at this point in time. We have also seen that after its withdrawal of the licence of the HKMEx, the SFC has not just sat idly by doing nothing with its arms folded. We have seen that it has done a lot of things, and we have seen that many people have been invited to assist in the investigation or arrested and prosecuted in relation to this incident.

Deputy President, Hong Kong is an international financial centre. The operation of private corporations have all along been monitored and protected by established mechanisms. It has never been the wish of the business sector and investors to see the Government meddling with the operation of the private market indiscriminately; nor is this something that the Government should do.

The HKMEx is a private company. If the Legislative Council invokes the P&P Ordinance to summon it to the Legislative Council, I would be worried that once this precedent is set, our business environment would be affected. Members of various chambers of commerce and the business sector have conveyed to me their view that the Legislative Council should not take this step.

I am not saying this out of thin air. I have conducted consultations. Some people have often claimed to be representatives of the business sector but I very much doubt whom exactly they are representing in making those remarks. We have consulted various chambers of commerce, and we have asked many members of the business community for their views. They are concerned that this will tarnish the image and reputation of Hong Kong as a free place for doing business.

Although there is the view that as Barry CHEUNG, Chairman of the HKMEx who has already resigned from the Executive Council, has close ties with Mr LEUNG Chun-ying, the Legislative Council should intervene in this incident in public interest, I think we should not politicize everything, and it now seems that whoever goes near Mr LEUNG Chun-ying is wrong. We should act for the purpose of finding out the truth, rather than interpreting everything as a conspiracy. Since the SFC and the CCB have been investigating this incident, the Legislative Council should not meddle with it by conducting an inquiry under the P&P Ordinance.

Deputy President, as you said in your speech, the Alliance has maintained the same consistent position on this incident. We consider it most imperative to find out the truth and bring the law breakers to justice, in order to uphold the fairness and effectiveness of the existing system and regulatory legislation, thereby ensuring that Hong Kong's position and reputation as a financial centre will not be jeopardized. Moreover, as judicial proceedings have already commenced and if the Legislative Council intervenes and conducts an inquiry under the P&P Ordinance which will require the staff of the SFC and the relevant persons to come to the Legislative Council, will that be appropriate?

Deputy President, I am really amazed by what I have seen today, because it seems that there are many experts here who appear to be very familiar with the operation of the financial services sector, but what they have said about Mr Christopher CHEUNG seems to be most unfair. Mr Christopher CHEUNG, being the representative of the financial services sector, raised a lot of questions on this incident based on the concerns of the industry that day, which included whether the SFC was biased in its treatment of large companies and small companies. I do not know how many people have taken follow-up actions after this incident, but Mr Christopher CHEUNG and us in the Alliance have continued to follow up the matter. We have met with and written to the relevant officials, and the Alliance also took the initiative to arrange for meetings with the



Chairman and Chief Executive Officer of the SFC. So, with regard to the comments made by Mr James TIEN earlier about the SFC lobbying support from the Alliance only and making explanations to us only, I think he made those remarks without knowing the truth and the actual situation and he was confusing right and wrong. As for Mr Christopher CHEUNG, it was also after considering the arguments of all sides that he decided not to support intervention by the Legislative Council. I believe this is a most rational course of action and he has made a lot of efforts and also consulted the industry and many members of the financial services sector.

I believe Mr Christopher CHEUNG and colleagues of the Alliance are very concerned about this incident. We will take follow-up actions appropriately in the light of the developments of the incident to ensure that the incident is handled in a fair manner.

Deputy President, I so submit.

**MR JAMES TO** (in Cantonese): Deputy President, having listened to the speeches of many colleagues, I think there are a few points that need to be or should be refuted.

To begin with, Deputy President, you made a very interesting point just now. I have never heard anyone say, nor do I think anyone has thought or considered, that the purpose of invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to conduct an inquiry is to enable the law enforcement agencies to dig out more evidence to facilitate law enforcement or prosecution. I have thought about this for a while. If nobody actually thinks this way, why should this be a reason against invoking the P&P Ordinance? I wonder who will think that when the Legislative Council invokes the P&P Ordinance, the purpose is entirely to look for more evidence to facilitate law enforcement. This is indeed entirely misleading and confusing right and wrong.

Deputy President, in fact, concerning the point made by colleagues that the Legislative Council should not conduct an inquiry because the SFC and the Commercial Crime Bureau (CCB) are investigating the incident, I find it even more bizarre because each organization actually has its own focus, and insofar as the Legislative Council is concerned, the focus as stressed either by Mr James TIEN or by Mr LEUNG Kwok-hung today is the accountability of the SFC.

The SFC targets other people in its investigation; the CCB's investigation focuses on whether anybody has breached criminal laws; and an inquiry conducted by this Council will focus on whether the SFC was derelict of its duties, whether it had set anyone free, and whether it had treated different corporations under its regulation with different standards. Deputy President, on the question of whether the SFC was derelict of its duties, the CCB's criminal investigation will never find out what exactly had happened, and since the SFC is investigating whether any person under its regulation has failed to comply with the relevant laws and regulations and will not probe into whether there was dereliction of duty on its own part, this can only be done by this Council.

Well then, in respect of the timing, from the past inquiries into various incidents of different scales, even when other law-enforcement agencies or statutory bodies were carrying out investigations, the Legislative Council could actually conduct an inquiry at the same time if the gravity of the incident so warranted. As Mr Alan LEONG has just said, the Legislative Council has sufficient experience and enough precedents to draw on. The Secretariat has accumulated sufficient experience to work together with Members to accomplish this task. I find even more puzzling a point made by you, Deputy President, or by one or two other Members earlier on, as you said that there would be serious troubles in the event of leakage of confidential information during the inquiry of the Legislative Council.

In the past several cases when the Legislative Council invoked the P&P Ordinance to conduct an inquiry, the Legislative Council had actually done quite a good job in upholding confidentiality. Since the first time when I took part in an inquiry conducted by the Legislative Council or the inquiry into the dismissal of Alex TSUI, I have participated in an inquiry on three or four occasions. I had paid close attention to all these several inquiries and I must say that a very good job was done in ensuring confidentiality. Even in the inquiry into the Lehman Brothers incident recently, with regard to the confidential documents that we received, frankly speaking, if those documents were produced in court for litigations between the victims and the banks, the results would perhaps be different.

However, as an inquiry by this Council must be conducted strictly in accordance with our terms of reference and as both Members and the Secretariat had fully done their parts in upholding confidentiality, not one single document had been leaked. Frankly speaking, in the Lehman Brothers incident, had there

been leakage of some of the documents, I think the ending would probably have to be rewritten for many lawsuits involving tens of million or hundreds of million dollars, but we had strictly observed the stringent procedures for ensuring confidentiality. So, if any Member of this Council would first throw down the gauntlet by querying that the Secretariat and Members of this Council had failed to uphold confidentiality in their past work, I think this is a bit going too far.

Deputy President, I must say for the record that Mr CHAN Kam-lam, being a Non-Executive Director of the SFC — He may not like to hear this but I must say that — has done a good thing. This good thing is that he, being a Non-Executive Director, confirmed to different media in two days that the SFC had closely kept in view this incident involving the HKMEx. Regarding those reports, although Mr CHAN Kam-lam very much wished to refute them, he has never said that these reports are untrue, nor has he denied that he had made or cited those remarks. The reason is simple because what he had said was cited word by word and there was also the recording, and it was not just one medium but five or six media had heard it at the same time. Deputy President, I am not pursuing the question of whether Mr CHAN Kam-lam had divulged any confidential information because as in this HKMEx incident, public interest can be way above the question of leakage of confidential information. However, I think this piece evidence is important and provides us with a stronger basis to inquire into this incident.

Lastly, Deputy President, I wish to make one more point. On various occasions recently, I have really come across many securities brokers. I did not intend to run into them, and even at the reception for the launch of a certain business magazine held at around five to six just now, I ran into some members of the industry. When this incident was mentioned, they were actually very angry about the SFC adopting different standards or seemingly different standards to treat different operators under its regulation or to put it plainly, small brokers and major exchanges.

I think Mr Christopher CHEUNG would find it most difficult to vote in the way that he is required to, and I think he has to pay a price for that. But of course, he is a member of a political party and he is at liberty not to consider applying to his party for exemption. However, I think this incident has to be handled seriously. It is because indeed, I dare not say that I represent his industry and Mr Christopher CHEUNG may think that in his industry, there are more people who do not find this enraging and do not feel angry at all, and he

himself knows best whether he spoke with honesty when he jumped to the opportunity of giving a speech at the beginning of the debate. But while things have developed to this state, he suddenly made a 180-degree about-turn. Frankly speaking, many functional constituency Members can apply for exemption from their political parties and so can we in the Democratic Party and yet, he eventually did not apply for it. I am a bit worried for him when he has to explain it to his industry in future.

**MR LEUNG YIU-CHUNG** (in Cantonese): Deputy President, every time when we discuss whether the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) should be invoked to investigate certain incidents, Members in opposition will cite the following two reasons generally. First, the powers and privileges should be exercised not abusively but reserved for issues of enormous import. Second, since the investigations of the incident by other organizations are underway, we should not hinder the investigations by other departments but should leave the case to them. Deputy President, I would like to discuss these two points with Members. Is the invoking of the P&P Ordinance this time around an abuse? At the same time, is it inappropriate for us to investigate the incident for investigations of the incident by other organizations are underway?

Deputy President, on the point of avoiding abuse and that the P&P Ordinance must be invoked only when the incident is of enormous import, I am really baffled. In fact, what kind of incidents will be regarded as of enormous import and how the invoking of such power is not regarded as abuse? Deputy President, I do not have much experience in this regard. I have only participated in an inquiry launched under the P&P Ordinance once. It was before the reunification and the inquiry was on the exploitation of imported workers. What problems did the incident of imported workers cause? The main concern was about their exploitation and unfair treatment. It was just a simple case. Was this an incident of enormous import? In fact, it was not a very important issue involving the direct interest of the people of Hong Kong. However, out of the concern of humanity and the rights of workers, Honourable colleagues unexpectedly supported the conduct of the inquiry.

Think about that, in the past, the inquiries were carried out based on certain principles, but today, when we request an inquiry into the HKMEx incident and the issues concerning the Securities and Futures Commission (SFC) on the major

principle of public interest, it is criticized as an abuse. How would this be so? I am baffled indeed. Since the incident involving the organization is affecting the operation of the financial markets and overall reputation of Hong Kong, it is closely related to the development of Hong Kong society as a whole. This is a very important premise, so why is this criticized as an abuse? Why are there still criticisms saying that the incident is unimportant? I really cannot understand this, totally baffled.

Now, I would talk about the concern that the present incident is being investigated by certain organizations, including the police, and so on. Deputy President, I would like to quote the inquiry into the incident of imported workers in which I have taken part. Back then, the incident was also investigated by other organizations, including the Labour Department, and so on, but still, the Legislative Council investigated the incident during the same period. Therefore, it is unconvincing to say that we should not launch an inquiry into the incident when other organizations are investigating it. This is not the case in history. Why could this be done in the past but not in the present case? I thus consider the two reasons untenable.

Most important of all, Members should understand clearly that different organizations are playing different roles, as mentioned by Mr James TO earlier, and they will focus on different aspects according to their roles. For instance, the police investigation will be focused on the criminal offences. Yet if the Legislative Council is to investigate the incident, we definitely will not approach the incident from the perspective of uncovering criminal offences. What will we focus on then? Some Members said earlier that we are politicizing the incident. Indeed, we will consider and investigate the issue from a political perspective. Why am I saying this? We are deeply worried that for consideration of certain powers, some organizations may not investigate the incident or prevent certain events from taking place. This is the most important concern. Besides, there are areas and directions which the organizations involved in the investigations cannot or will not examine. This is the most important point.

Today, we should attach great importance to the incident, for it is of the gravest concern to the public. The public is concerned whether anyone has used the authority conferred on him or her to pervert the enforcement of law and failed to fulfil his or her due responsibility. Therefore, the P&P Ordinance will help us find out the truth to let the public know clearly whether there was dereliction of

duty on the part of any person in the entire course of operation, as mentioned by colleagues earlier. Was there dereliction of duty on the part of any organizations? Did anyone exercise any power to obstruct the investigation? These issues are more important.

Regarding the nature of the incident, many colleagues have already talked about it, so I will say no more about the existence of the problem. In fact, this is actually the case. Come and think about it. Why was Mr Barry CHEUNG's appointment renewed, where the renewal arrangement is inconsistent with the standard practice? Deputy President, I believe the investigating organizations outside will not inquire into this problem, am I right? However, by invoking the P&P Ordinance, we can probe into the problem and let society know the justification for such appointment. Hence, today, by supporting the invoking of the P&P Ordinance to conduct an inquiry, we will merely investigate issues outside the scope of the investigations by the other organizations now investigating the incident. In the history of the Legislative Council, a number of such inquiries were carried out in the past. If so, why can this not be done today? I really cannot understand this.

Moreover, Mr CHAN Kam-lam has made certain remarks to the press, which he later denied having made those remarks. He has been self-contradictory. We do not know which remarks he made, the one on the former occasion or that on the later occasion, are true. However, if we may invoke the P&P Ordinance to conduct an inquiry, I believe Mr CHAN Kam-lam will be invited to clarify his remarks as a witness, telling which remarks are true and which are not. Has any organization conducted an investigation into him? Has any organization requested him to make clarifications? No. The public have been puzzled by these questions all along. Besides, it is the function and nature of work of the Legislative Council to monitor and identify any irregular operation, and to investigate whether there is dereliction of duty or incompliance with the regulations. We should investigate and make public these issues to let the public understand the situation and know the truth. This is the role and mission of the Legislative Council, as well as that of the Members of the Legislative Council.

However, in every discussion on the P&P Ordinance, we are deprived of the right to fulfil our duties and exercise our due rights by colleagues opposing the proposal. We consider this extremely regrettable. If we do not take any action, what is the purpose of the legislature? What roles may Members play

and what can Members do? In the present circumstances, Members are prevented from investigating this incident or other incidents, and in case of doubts arising in society, we simply turn a blind eye to them. In that case, what can we sitting in the Chamber do? I know that apart from enacting legislation, the most important function of the legislature is to perform the monitoring. If we fail to effect monitoring, what are we actually doing? As such, Deputy President, I have to reiterate this point. I hope that colleagues opposing the motion will ponder what role they intend to play in their seats in this Chamber or what the legislature should do.

The P&P Ordinance is the ultimate power we have in monitoring government organizations and public figures in actuality, so if we do not invoke and use it properly, we will be comparable to tying our own hands or folding our arms, or actually blindfolding ourselves to refuse to see the truth. Such a practice is regrettable and lamentable.

Hence, Deputy President, I support the original motion today. I also hope that other colleagues will change their mind and support the motion. Deputy President, I so submit.

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

**IR DR LO WAI-KWOK** (in Cantonese): Deputy President, initially, I did not intend to speak today, for a number of Members from the Business and Professionals Alliance for Hong Kong (the Alliance) have already expressed our views. However, at the meeting today, I have heard certain unfair criticisms directed at Members of the Alliance, I thus consider it necessary to give a response under this circumstance.

Deputy President, I had not attended the meeting between the Alliance and the Securities and Futures Commission (SFC) due to other official commitment. However, my view is consistent with that of my colleagues in the Alliance. We disagree with the invoking of the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to investigate the SFC at the present stage. Deputy President, I can explain my reasons, or some of my reasons, for opposing it simply with a newspaper cutting. The newspaper cutting I have at hand comes from the newspaper dated 6 June. The headline runs to the effect that: "SFC

suspects Barry CHEUNG of falsification for \$1.5 billion finance/Commercial Crime Bureau (CCB) investigates conspiracy to use false document/Hong Kong Mercantile Exchange (HKMEx) claims to be the victim. A chart in the newspaper cutting states that one party had agreed to offer a loan of US\$ 200 million, which could be exchanged for privilege shares five years later, and a short-term financing loan would be provided. Later, the documents for short-term financing, alleged to be involved in the falsification, were submitted to the SFC via the HKMEx, showing that the HKMEx had sufficient funds for its operation. Alright, what is written in the news? It states that the SFC suspected the falsification of financing document and referred the case to the CCB, and the CCB of the police has arrested six persons — as indicated by the arrow on the newspaper cutting. This simple chart shows clearly that the SFC has been the plaintiff so far. But why would the Legislative Council suddenly invoke the P&P Ordinance to turn the SFC into the defendant? Will this proposal be conducive to the investigation of the incident, will this help find out the truth or will this do a disservice? For this reason, I totally disagree with the invoking of the P&P Ordinance at the present stage to investigate the SFC.

Deputy President, colleagues from the Alliance and I are extremely concerned about the incident. However, like many members of the public, we consider that at the present stage, top priority should be given to clarifying doubts and finding out the truth of the incident, and it is most important that persons involved in the case can be brought to justice. We are of the view that it is extremely important at present to uphold the fairness and effectiveness of the financial system and regulatory legislation, and ensure that Hong Kong's status and reputation as a financial centre will not be jeopardized. This is our most important and essential task now. At present, the SFC and the CCB have launched investigations into the incident. Some people have been arrested and some have been brought under prosecution. Against this background, will the invoking of the P&P Ordinance by the Legislative Council facilitate the investigations or hinder them? Today, colleagues supporting invoking the P&P have seemingly failed to justify their own case (Mr LEUNG Kwok-hung interrupted in his seat) ..... this is my time to speak, Mr LEUNG Kwok-hung. Alright, under this circumstance, we in the Alliance consider it appropriate to let the two dedicated organizations to carry out the investigations, and depending on the development of the incident ..... Certainly, we should do the right thing at the right time, but more importantly, we should ensure that the incident is handled in the fairest manner. At the present stage, dedicated departments with credibility are collecting evidence and investigating the case, and during the trial



of the case in the Court, the information made public definitely will not be confined to the present volume and more information will surely be available. The information will include the practice of the SFC in the whole process in approving the licence and the series of monthly regulation, whether the practice is fair, whether there are loopholes and whether there is favouritism. Such information will all be made public. Therefore, this Council should keep a close watch on the development of the case and take appropriate follow-up actions in due course.

Deputy President, we agree and believe unanimously that Members supporting and opposing the motion both recognize the utmost importance of Hong Kong's status as a financial centre. Members of the Alliance come from the business and industrial sectors and the professional sector, and Mr Christopher CHEUNG is the representative of the finance sector. Here, I would like to thank Mr James TO on behalf of Mr Christopher CHEUNG for his concern about the trade, and I believe Mr Christopher CHEUNG would allow me to say this on his behalf. I would like to point out that I used to work with Mr Christopher CHEUNG, and I can tell from my own experience that Mr Christopher CHEUNG definitely can represent the trade. Mr Christopher CHEUNG and colleagues in the Alliance all attach great importance to the functions of the SFC, and we will closely monitor whether the SFC has carried out its work in a fair and impartial manner. We will ensure that the SFC will not be discriminatory against any operators, and we will monitor whether it treats large, medium and small operators equally. In the event of any maladministration or malpractice, we surely will not tolerate it but will make vigorous efforts to criticize and whip it.

Deputy President, I so submit.

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

**MR PAUL TSE** (in Cantonese): Deputy President, let us read the wordings of Mr LEUNG Kwok-hung's motion today. It says that this Council should "appoint a select committee to inquire into the surrender by the Hong Kong Mercantile Exchange Limited of its authorization to provide automated trading services and related issues". We may look farther back to a motion proposed by Mr James TIEN at the House Committee some time ago. The heading of the

motion is "the setting up of a select committee to inquire into issues relating to the surrender by the Hong Kong Mercantile Exchange Limited of its authorization to provide automated trading services". I am afraid the difference between the two motions lies in the usage of the word "relating to" and it has prompted many colleagues to express different views in their earlier speeches. In other words, Mr LEUNG Kwok-hung's motion literally urges for an inquiry into the HKMEx, whereas Mr James TIEN's earlier motion urges for an inquiry into issues relating to the incident. In his speech made at the House Committee, Mr James TIEN put forth a very clear objective. He repeatedly mentioned the handling approach adopted by the Securities and Futures Commission (SFC), questioning the possible delay in the process, the work done, as well as possible maladministration on the part of Mr Ashley Ian ALDER of the SFC in handling the incident, and issues that should have answers but he could not disclose, and so on. It seems that the motion of Mr LEUNG Kwok-hung today has not stated clearly the target of the inquiry. It may even give people the impression that the HKMEx is the target of the inquiry, even though other issues are mentioned in the motion.

Deputy President, the slightest discrepancy will lead to a huge difference. However, I hope that before I finish my speech, Members will understand that I am not picking on words, and I hope Members will handle the terms of reference and the subject of the inquiry of the Select Committee with great caution even if Members pass the motion. Deputy President, Members are familiar with the basic criteria to be met in exercising the power conferred by the P&P Ordinance, which include public interest, and it refers not to public interest in general but vital public interest. Deputy President, in my view, given the scarce resource, land supply and population, the sound systems of Hong Kong is our only asset. These systems include the so-called sound legal system, the favourable business environment and the sound monitoring system. Hong Kong has been relying on these time-honoured advantages over the years to attract investors from all over the world to do business and make investments in Hong Kong and to win high reputation from international accreditation organizations, including our reputation for our competitiveness and free trade. All these achievements do not come by easily. If we lose all this, Hong Kong will be over. Hence, I personally consider this a question of the utmost importance. It is a lot more important than the investigation of the possible falsification and favouritism in the West Kowloon Reclamation Concept Plan Competition.

Deputy President, is the present incident a case involving certain public organizations or government departments, and even public officers that warrant

the use of the resources of the Legislative Council to carry out an inquiry, rather than a case merely involving a private organization, the HKMEx, or even private affairs as stated at the very beginning? If we zero the focus of the inquiry in on the SFC, we will identify a subject that warrants an investigation. As mentioned by Mr James TO earlier, in the investigation by the CCB, or the investigation by the SFC if any, the subject of the investigation will be the HKMEx and Mr Barry CHEUNG, or the Mainland investors suspected of using false instruments to indicate their investment intention. However, these are not the target subject we should or going to investigate. On the contrary, we should focus on considering whether the SFC has failed to fulfil tasks it should have done, whether it has delayed in fulfilling its duties, or to a more serious nature of whether anyone has intervened in the case. As for the third issue, according to the black and white answer submitted by the SFC to this Council, Mr Ashley Ian ALDER had made a clear account in writing that there was no question of intervention by the Government. Of course, the conclusion about this issue is subject to verification.

Deputy President, since we consider the incident involves vital public interest and we have identified the subject of investigation, what will be the next step then? Next, we should confirm the presence of *prima facie* evidence to prove that we do not think this up. Theoretically, there seems to be some initial evidence proving there was delay in handling the incident. I notice a more important point that on 29 May this year, Secretary Prof K C CHAN mentioned in his response to Mr Christopher CHEUNG's question the information on the same incident announced by the SFC on 18 May, and the receipt of the notification on the surrender of the authorization by the HKMEx. He seemed to have made this comment, which would be a confirmation of the surrender of the authorization by the HKMEx of its own initiative. However, if I have not read it wrongly, Mr Ashley Ian ALDER's comment is stated in the paper he submitted to this Council, for the 11th paragraph clearly states that ..... The Secretary said at the meeting of the Panel on Financial Affairs of this Council that the SFC had issued the so-called notice of intention to withdraw the authorization to notify the person concerned that the authorization would be cancelled. In fact, Mr Ashley Ian ALDER indicated that under normal circumstance, as a matter of procedural justice, it was necessary to notify the person concerned and give the person an opportunity to reply before taking any measure. But it should not be the practice they adopted that time in cancelling the authorization of the HKMEx unilaterally and without allowance. In fact, which party has initiated the cancellation? Which party has handicapped its own power? Is the situation comparable to a

common phenomenon in companies, where the employer will indicate the intention to dismiss an employee, and the employee will then resign, so that both parties need to say no more? Which is the actual case? There are contradictory issues on the surface, which require further clarification. What is in the right and what is in the wrong? What was the cause? Whose comment is right and whose comment is wrong? Has anything been covered up? It seems that there is *prima facie* evidence.

What are the justifications for not invoking the P&P Ordinance to carry out this inquiry? Of course, colleagues have put forth a lot of reasons earlier, so allow me to spend some time to go through these points briefly and see whether we can clear these hurdles. One of the concerns is about dual-track investigations. However, as I said earlier, if we clearly define that the target subject of the inquiry is the SFC but not the HKMEx, nor Barry CHEUNG and the five investors concerned, I think the inquiry by us will not give rise to the question of dual-track investigations and the problem of causing hindrance to the other investigations. Besides, is there any problem with the operation of the SFC? Regarding this concern, I am afraid none of the organizations mentioned just now, including the CCB and the SFC, will investigate the possible mistakes on the part of the SFC in the incident, so this Council will be the only organization that may launch such an investigation.

The second concern is about timing. When an incident happened, we can indeed wait for a while till other situations surface before we launch an inquiry. However, if the incident involves continuity and is of an ongoing nature, it will be a case of a continuous process now. It will affect the reputation and credibility of the SFC as a regulator in the international community. Hence, I think we can brook no delay in doing this. If any irregularity is identified, we should make clarification as soon as possible. Deputy President, for the cost involved, it definitely depends on the significance of the incident, and if it is worthy of doing so, I believe this Council should not have too much reservation about this.

Deputy President, on the issue of confidentiality, according to my past experience, I can hardly agree in full with Mr James TO's remark that this Council has done a very good job in handling confidential documents. Take the recent case of Timothy TONG as an example. I notice that many documents which should have been kept confidential, including the bottles of wine kept by individual departments each year, both the information on liquors and red wine, has been made public in detail. Certainly, I cannot blame the Secretariat for

this. I think something must have gone wrong. But what is wrong? I am afraid we have to investigate ourselves. Despite that, the confidentiality system has been working well in general. If the information is not too "juicy" or "tasty", the documents will not be so attractive and the media will not have pushed so hard. Under such circumstance, our confidentiality system may be more effective. No matter how, regarding the documents to be investigated this time, I think they will not involve the few cases under investigation this time even if they are confidential in some measure. On the contrary, the documents will only involve documents directed against the SFC, which may be records relating to its policies and work.

Deputy President, indeed, my gravest concern is about a fair trial. I am worried that if we launch the inquiry now, it may involve or lead to the following scenarios in the course of investigation. First, will it give rise to the problem of confidentiality mentioned by me earlier, where documents are leaked to society despite all the precautionary measures put in place? Second, will the concern and report of the media affect, in a large or small extent, the evidence to be given in future by the HKMEx, Mr Barry CHEUNG or the several investors concerned, which may affect their right to a fair trial? There will be such risks, albeit of different degrees. At least, there is no way for us to rule out such risks completely.

However, on the whole, we have to consider the significance of the questions brought forth by this incident to Hong Kong and whether we can accept this irregularity. Perhaps we consider it unacceptable to wait for even another day and that clarification must be made as soon as possible, so that it will not injure the reputation of Hong Kong. Moreover, we have to confirm the target and the subject of the inquiry concerned. If we can be relatively precise in making proper adjustments and control, we may do a better job in confidentiality. As in Timothy TONG's case which I mentioned earlier, and many other cases in the past actually, this Council will be able to achieve it if we will do so. Certainly, it relies on the effort of every Member. I hope that in the course of inquiry, Members will not use the inquiry directed at the SFC as a disguise to deal with other issues like the appointment of Mr Barry CHEUNG against the "six-six" principle or his status as a "LEUNG's fan". These issues may be interesting in politics, yet it may not be appropriate for this Council to investigate these issues, nor should this Council invoke the P&P Ordinance to investigate such issues.

On the whole, I think this is an incident of enormous import. As I said earlier, since we considered the incident of the West Kowloon Cultural District warranted the press of the button back then, I am afraid we do not have many options this time around for us to choose to evade this responsibility and obligation.

Deputy President, let me recount a number of incidents in which the authorities or the persons concerned had tried to convince this Council to change its mind to not launch an inquiry. The persons include Secretary Prof K C CHAN. As I mentioned earlier, Secretary Prof K C CHAN had replied to a question on 29 May, but he failed to explain all the problems. Then at the meeting of the Financial Affairs Panel held on 3 June, Mr Ashley Ian ALDER gave his explanations. As Mr James TIEN said, during the exchanges at the meeting, Mr Ashley Ian ALDER simply said answers could not be provided for many issues, and this Council could not get the necessary clarification and satisfied reply.

Moreover, during the debate on the relevant application at the meeting of the House Committee on 7 June, Mr Christopher CHEUNG mentioned that the authorities had promised to provide written explanations to certain about which questions he had expressed grave concern. However, after hearing all the remarks, I have not heard Mr Christopher CHEUNG tell whether or not he has received the explanations from the authorities up to this very moment. I think he has probably not. If that is the case, a question is left unanswered. Furthermore, on the same occasion at the House Committee, Mr Abraham SHEK said he would try to explain to Mr James TIEN the reasons for their changing their mind. But as far as I understand it, Mr James TIEN has not yet received such explanation.

To conclude, since all the requirements for invoking the P&P Ordinance have been met now, all the negative factors or elements to be avoided have been considered, and because there seems to be no special question and factor warrant obstruction of the application for invoking the P&P Ordinance and the Government has taken no further action or remedial action to remove the doubts of this Council, I am afraid we have no alternative this time but to agree with the application. Thank you, Deputy President.

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

**MR WONG YUK-MAN** (in Cantonese): Deputy President, the incident relating to the Hong Kong Mercantile Exchange (HKMEEx) involving Barry CHEUNG, an Executive Council Member and the former Chairman of the Urban Renewal Authority, is perhaps the second and also the biggest financial scandal since LEUNG Chun-ying came to power.

On 7 July, Mr James TIEN of the Liberal Party proposed in the House Committee that the powers under the Legislative Council Powers and Privileges Ordinance (P&P Ordinance) be invoked to establish a select committee to inquire into the incident in which the Securities and Futures Commission (SFC) was allegedly biased in favour of the HKMEEx. Although this was supported by some Members in the pro-establishment camp, at the critical moment, when "Grandpa" blows the whistle, everyone had to kneel. Such is the destiny of Members in the pro-establishment camp. Although they have all my sympathy, there is nothing I can do for them. Subsequently, Mr James TIEN, who levelled the fierce criticism that "Barry CHEUNG's political life is over", said that since it was expected that there would not be enough votes, he would not propose the motion at the Legislative Council meeting again, nor would he present a petition to request that a select committee be established to carry out an inquiry. Of course, I was disappointed but this does not matter because today, Mr LEUNG Kwok-hung has proposed the motion on behalf of "Master TIEN" and the latter is also righteous enough to vote in favour of it, so we have to support it certainly.

I have written an article entitled "The corrupt '689' clique the ethics and decorum of which are in tatters". We are Members of the Legislative Council and represent public opinion, so we really have to magnify errors and raise matters to a higher plane of politics. Now, let me tell you in your face and there is no need for the likes of Ir Dr LO Wai-ki to say that we magnify errors and overplay matters. I am about the last Member to speak, so there are few opportunities for you people to refute me. As soon as this kind of issues is broached, it looks as though some Members have taken drugs that make them dumb. Why must we magnify errors and overplay the matter? Because as representatives of the public opinion, our vocation is to monitor. We negate in order to affirm, so it is true that we oppose for the sake of opposing. It is correct for you to criticize us like this. Does anyone mean that we should oppose for the sake of supporting? In particular, as a Member of the opposition, I certainly would open my eyes wide to monitor the Government and whenever there are gaps that I can poke at, I would certainly do so. Because even though our views

are only those of the minority, through the debates and the public venues of the Legislative Council, all members of the Hong Kong public have the opportunity to see how the royalist camp and the opposition engage in eloquent debates and make systematic analyses through live broadcasts. In fact, we all make progress together and there is the opportunity of replacing mistakes with the truth.

Therefore, please do not behave like Ms Starry LEE too readily. Although she is an Executive Council Member and the Vice-Chairman of the DAB, she made a load of nonsense and levelled the criticism that this is a waste of public funds. She could go so far as to say this and she even wanted to cite the Lehman Brothers incident as an example. In the Lehman Brothers incident, why did the DAB initially lend its support? On that day, when "buck teeth" LAU Kong-wah walked out of the Chamber, he shouted aloud to the victims of the Lehman Brothers incident, "We will surely stick it out for you." However, no sooner had he said it than the DAB wanted to back off. In the end, it was because of the full weight of public opinion that it had no choice but to give its support, was it not? Now, you kept using the outcome as the ground to rule out the proposal of establishing a select committee. Is it always necessary for each inquiry to yield results? What is meant by a waste of public funds?

Having said that much, I think our Honourable colleague really have to practise their rhetorical skills a little. As a Member of the Executive Council and the Vice-Chairman of the DAB with such high academic qualifications, she could see fit to use such a term as "大細超 (literally, big and small eyes, or discriminatory)". Little did we expect Dr KWOK Ka-ki to do the same and also said "大細超". Do you know that this is slang? Only the likes of WONG Yuk-man and LEUNG Kwok-hung would say it, but you are such Honourable Members. What does "big and small eyes" mean? Don't you know how to say double standards or differentiation of affinity in relationship? The character "超" in "big and small eyes" has two meanings. When used as a verb, as in "'Brother elephant', why are you staring at me?", it means "to stare at". When used as a noun, it means an eye, so "大細超" means eyes of different sizes. If a person has trouble even in speaking, how can his thinking be clear?

Our great Senior Counsel, Mr TONG, also talked about being "cynical" and Ms Claudia MO also gave him a response — Ms Claudia MO is good at both Chinese and English. There is a saying among the Chinese. Confucius said, "Conformist hypocrites are the thieves of virtue". There are many conformist



hypocrites in the whole legislature and out there. Conformist hypocrites are "the thieves of virtue", meaning that they do not care one way or the other, saying that something cannot be done and nothing matters. This is what conformist hypocrites are. They are the thieves of virtue, that is, they are immoral. Their rhetoric is so poor and their vocabulary so limited. On hearing "大細超", I found it to be so jarring. I often use this expression but "Long Hair" and I cannot help it because we are boors. However, despite our crudeness, we also have some refinement. In the legislature, what do we hear very often? It does not matter and I will just take this as a learning process in the legislature. I have prepared a script but now, it seems I am not following it. However, it does not matter as there is still so much time. I am only adding a few words after hearing Members speak since I am afraid that later on, "Long Hair" will not be able to use up the 15 minutes when he speaks, so I am giving him a hand.

Deputy President, what does "understanding whatever words you hear mean"? We do not understand the words we hear. What did Mencius say about understanding whatever words you hear? "When I hear deceptive speech, I know what it is covering up. When I hear evasive speech, I know its pitfalls. When I hear crooked speech, I know where it departs from the truth. When I hear evasive speech, I know its emptiness".<sup>3</sup> This legislature is glutted with one-sided, extravagant, all-depraved and evasive words — if you do not understand, this just look up the dictionary — therefore, Members are mystified, not knowing what you are talking about.

Just now, Ir Dr LO Wai-kwok said that an inquiry into the SFC should not be launched now, asking how come the SFC would be turned from the prosecution into a defendant. The Honourable Ir Dr LO, buddy, has left and another gentleman is chairing the meeting. What does this motion moved by Mr LEUNG Kwok-hung say? It says, "That this Council appoints a select committee to inquire into the surrender by the Hong Kong Mercantile Exchange Limited of its authorization to provide automated trading services and related issues; 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.". It is very detailed and this is how Mr LEUNG Kwok-hung's motion is like, not turning the SFC from the prosecution into a defendant, as that buddy claimed.

<sup>3</sup> <<http://www.acmuller.net/con-dao/mencius.html>>

Are there any prosecution and defendant in a select committee? There is none, buddy. Therefore, it is only necessary to see how the standard of Legislative Council Members is like to understand the situation. His views actually deviated from the question, did they not? Do not follow my example and babble just anything because the stuff I am made of is very different from yours. She talked about "big small and small eyes" and is even incapable of saying differentiation of affinity or double standards, right? In that case, just speak in English like Mr SIN Chung-kai.

Things have their root and branches; affairs have their end and beginning. Why have we come to such a pass today? The ethics and decorum of the whole Government is bankrupt and it is totally decadent. He even prepared a report on the work of the Government in the first year before the 1 July rally and it was published only online. Let me tell you, if he refuses to delete the message page, it would be so spammed and overwhelmed by criticisms that they would hit the ceiling. He does not even know how to write the word "shame" and even dared follow other people's example by publishing a report on the Internet to blow his own trumpet. As the Chief Executive and the head of the Government, he ought to see how deplorable the whole team of accountability officials is — I often describe this as in utter disarray and a pile of "dog excrement and trash". I did not accuse him wrongly and there are facts to support my claim. If not, how come Mr James TIEN had the guts to say that this Government does not work? Mr James TIEN, I really admire you and there is little wonder why your daughter won in the horse race. Her "Invictus" is really bold and powerful, full of valour and vigour.

Those people are really "dog excrement and trash". I often say that they are lowly people who resort to petty tricks. What kind of person is Barry CHEUNG? What kind of person is Franklin LAM? That Secretary for Development got into trouble less than a month into his job. He was arrested; moreover, he was convicted, was he not? All these are indisputable facts. There are no talented people around him. It turns out he is such a jerk that he does not have any friends. He has neither friends nor connections, has he? It does not matter if he does not have any talents to his aid, but he found those "dog excrement and trash" instead and as a result, problems arose. Are we really so idle? Are we so idle that we have to exercise the powers under the Powers and Privileges Ordinance to stir up controversies for no good reason? However, those people have at least provided a platform for me to fire my guns. This is

exactly what is happening now. I have spoken for yet another 10 minutes, have I not?

(THE PRESIDENT resumed the Chair)

In fact, I have put in a great deal of mental effort into writing an article. I will upload it onto the Internet and Members can take a look if they care. The entire governing clique can be described as lowly thieves. I am only proposing this motion in my capacity as a Member in accordance with the Rules of Procedure. Do you think I want to kill your whole family? No matter how, it surely cannot be passed at separate voting, can it? A lot of things are doomed to fail but if we only look at the results in all matters, we should simply refuse to live any longer. Dr KWOK Ka-ki also said that when he sees patients as a doctor, he can also say — President, you are now back — he can also say that since you will die sooner or later — President, I do not mean that you will die — all people are bound to die, are they not? However, does it mean there is no need to see any doctor and seek medical treatment? In fact, it is not entirely correct for Dr KWOK Ka-ki to say that all people will die. Rich people can die a little later, can they not? Those with money can die a little later. Although all people are bound to die, rich people can extend their lives a little bit. If they unfortunately suffer from cancer, which is very difficult to treat, they can still use targeted drugs that cost \$10,000 each treatment, so rich people can defer their death by 10 years. Of course, since WONG Yuk-man has no money, he has to say goodbye immediately, does he not? Rich people can extend their lives a little bit but in the end, they are still bound to die.

Of course, what I said just now is indeed not quite an appropriate analogy but what I mean is that we cannot just look at the outcomes when deciding whether or not to do something. We often say that heroes cannot be judged by their success or failure. You must not think that the wisdom of our forebears is fallacious. It is all life experience, is it not? Have you ever heard of "I do not have to achieve success personally"? Have you not heard of "making waves and creating trends"? Have you not heard of "self-awakening and awakening others"? After one has awakened, one also hopes that other people will also awaken, right? If one has to be sure of the outcome before doing something, one had better not be a human being, still less being a Member. If I know that I will surely win, does that mean I do not have to run in an election and do not have

to canvass for votes? Of course, many people here did not have to run in elections because there was no one to compete with them. It was only necessary to settle the matter with "Grandpa", so that a place could be allocated to them and that would do. Certainly, they think that it is easy to get elected, so naturally, they can speak in a relaxed manner. For people like us, we have to fight for survival. Not only are we tarnished; we are also arrested, are we not? I am besieged by enemies on all sides but I can still break out of the siege. Does anyone mean that in these circumstances, I should do nothing and just feel sorrowful and crestfallen?

Basically, the entire incident is a big scandal. Just now, a Member also said that through this kind of inquiries or select committees, we can find out the truth of many matters, including the matters read out from newspapers by Members just now. The Legislative Council does not have any judicial power, nor is it a law-enforcement agency; it is only the legislature, so how can there be something like the prosecution or the defence? After Legislative Council Members have become the members of a select committee, they have to comply with all the relevant requirements, do they not? If Members ask questions that deviate from the subject matter, the chairman of the committee can give orders like our astute President of the Legislative Council does. The President of the Legislative Council often tells me, "Mr WONG Yuk-man, you have strayed away from the question." The chairman of the committee can do so. I asked Timothy TONG in the Public Accounts Committee when he had been appointed a member of the Chinese People's Political Consultative Committee and Mr Abraham SHEK also shouted at me to stop, saying that such a question could not be asked and asking me what my question had to do with value for money audit. Consequently, we had to find ways to ask this question in a roundabout way, did we not? It was only necessary to establish a relationship with value for money audit.

Therefore, I hope Members can understand one thing. May I ask what the Legislative Council can still rely on nowadays? May I ask what the Legislative Council can still rely on? What can it rely on? What we can rely on is the powers that we possess. With these powers, we can find out the truth, or we have the chance to find out the truth, although it is also possible that the truth cannot be uncovered. However, even if the truth cannot be uncovered, through public hearings, this matter can be further clarified, so what is bad about this? Some people say that the police are carrying out an investigation and so is the SFC. However, what do their investigations have got to do with me? They can

do their job and I can do mine. In the same vein, if you make investments and got rich, what has this got to do with me? You buy stocks and I look at others buy stocks, so everyone is just doing his own things. The SFC and the police certainly have to investigate. They have to make arrests but at present, they have not yet arrested Barry CHEUNG. It is not the case that we want to mess with Barry CHEUNG now. What I want to ask now is how the process was like when he surrender the authorization, Secretary, is that right? No one is the defence and no one is the prosecution (*The buzzer sounded*) ..... I have finished speaking.

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

(No Member indicated a wish to speak)

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, first of all, I have to thank Members for their speeches and the valuable views presented by them.

I understand Members' concerns. In view of the fact that the Securities and Futures Commission (SFC) and the Commercial Crime Bureau of the Police are still investigating the alleged irregularities of the Hong Kong Mercantile Exchange Limited (HKMEx), it is not advisable for me to make any further comments on matters relating to the HKMEx. However, in order to assist Members in understanding this matter, I will summarize some existing information and give a response with regard to several areas.

Some Members raised some queries about whether the HKMEx had taken the initiative to surrender its authorization or the authorization had been withdrawn by the SFC. In the statement dated 21 May, the SFC explained the process for withdrawing the HKMEx's authorization and pointed out that the process of terminating the operations of the HKMEx is entirely different from the process that might apply to a troubled broker. It explained that since the functions and operations of automated trading services (ATS) providers and licensed brokers are quite different, it is not appropriate to make direct comparisons. ATS providers are market operators who provide electronic platforms. They are market operators, not intermediaries. Therefore, the regulatory focus is on the trading platform provided by ATS providers for the

market. Moreover, ATS providers provide trading, not clearing facilities and they do not hold client assets. Therefore, the two are subject to different regulatory regimes and different provisions under the Securities and Futures Ordinance apply.

Just now, Mr Paul TSE raised some queries on my point about whether it was a surrender or withdrawal that I mentioned in relation to the oral question asked in the Legislative Council on 29 May. At that time, he indicated that I had not made myself very clear. Regarding the question on that day, my reply cited the SFC's statement made on 21 May. Of course, I did not have the time to cite the full text on that day but I stated that my reply was based on the SFC's statement made on 21 May. The statement of the SFC is as follows and let me quote part of it: "As a result of the recent deterioration in HKMEX's financial position, the SFC notified HKMEX of its intention to withdraw its ATS authorization. The Securities and Futures Ordinance (SFO) requires the SFC to give HKMEX an opportunity to respond to the SFC's concerns before a withdrawal decision may be made. In accordance with this statutory obligation, the SFC provided HKMEX with time to respond to its concerns. Giving a party procedural fairness is a legal obligation. It is not a sign of any special treatment nor does it mean the SFC was applying a flexible approach in ensuring HKMEX complied with all relevant obligations. At the end of this process, HKMEX was unable to satisfy the SFC that it had complied or could comply with the financial condition attached to its authorization. The SFC proceeded to withdraw the authorization with immediate effect after HKMEX decided not to contest the SFC's decision and agreed to surrender its authorization. This allowed HKMEX to prepare for an orderly wind down of open positions.". This claim and the statement are certainly consistent with the information subsequently provided by Mr Ashley ALDER to the Panel on Financial Affairs.

Next, I wish to talk about the regulatory regime of the SFC for ATS providers. Previously, the HKMEX was authorized to provide ATS under Part III of the SFO. The relevant general regulatory provisions are stipulated in Part III of the Ordinance and the details are given in the Guidelines for the Regulation of ATS published in accordance with the Ordinance. The Guidelines is a public document open for inspection on the SFC website.

Basically, the SFC points out that ATS operations are rather diversified. In general, the level of regulation of an ATS will be commensurate with the functions it performs and the risks it poses. The SFC will consider, among other

things, the nature and extent of each ATS activity, the market participants that might be affected by the ATS, whether retail investors may be involved, and whether any systemic risks might arise. The SFC will give regard to international standards and best practices in considering the regulation of ATS.

Some Members have expressed views on the transparency and accountability of the SFC. On the alleged irregularities of the HKMEx, the SFC will try to maintain its transparency as far as possible on the condition that the relevant investigations and possible legal procedures will not be affected. I wish to reiterate that both the Administration and the SFC attach great importance to public demand for transparency and accountability on the part of the regulatory authorities. We will continue to endeavour to do a good job of it in this regard. As I mentioned just now, subject to these conditions, the SFC would always announce enforcement news with a view to facilitating public understanding of the enforcement work if it takes any enforcement or disciplinary actions or commences any legal proceedings after completing its inquiry or investigation. At present, the SFC is investigating the alleged irregularities of the HKMEx. In line with the established practice, the SFC has undertaken that if it takes any enforcement or disciplinary actions or commences any legal proceedings after completing its inquiry or investigation into the suspected irregularities of the HKMEx, it will announce enforcement news with a view to facilitating public understanding of the enforcement work.

Lastly, I wish to point out that the SFC is an independent regulatory body that imposes regulation in accordance with the law. At the meeting of the Panel on Financial Affairs on 3 June, the Chief Executive Officer of the SFC stressed that the SFC was absolutely independent in relation to the matters involving the HKMEx.

President, the SFC has never tolerated any irregularities. From many examples, I can see that the SFC has dealt with tricky cases dauntlessly. As usual, the SFC will continue to perform its functions without fear or favour.

I stress again that I understand Members' concerns about the HKMEx incident. However, at the moment, the most important thing is not to affect the relevant enforcement agencies in their investigations and we should also avoid affecting any possible legal proceedings in the future.

With these remarks, President, I urge Members to vote against the motion.

**PRESIDENT** (in Cantonese): I now call upon Mr LEUNG Kwok-hung to reply. This debate will come to a close after Mr LEUNG Kwok-hung has replied.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, first, I wish to make it clear to the Honourable colleagues who oppose this motion that at present, we definitely will not investigate any criminal offence relating to Mr Barry CHEUNG, nor will he answer our questions here. Members probably do not understand that actually, we only wish to exercise our powers under the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to conduct an inquiry into matters of vital public interest.

Of course, the first party to be held accountable is the Securities and Futures Commission (SFC), is it not? No matter what Secretary Prof K C CHAN says, he is not someone from the SFC and he only cited another party's words. He can impose regulation but is he capable of regulating the SFC? It can be seen from the investigation into the Lehman Brothers incident that if they had been really that smart, the Lehman Brothers incident would not have happened. In 2003, the IMF published a report telling the Secretary that those products were problematic, so what did he do at that time? While he was in New York, he told us that he was already aware of that and had had a thorough discussion in New York. Buddy, he said that in New York, not in Hong Kong, so has he forgotten about it? He said in the inquiry that he had said so in New York, so does he think that all people know foreign languages?

Whether or not the SFC fulfilled its responsibilities and took any action when monitoring the financial situation of the Hong Kong Mercantile Exchange Limited (HKMEx) or after it had become aware of the financial problems of the HKMEx is precisely the subject of our inquiry. One cannot get away by just issuing a statement, or as Mr James TIEN put it, by saying "I cannot make any comment" or "I do not remember". In a committee established in accordance with the P&P Ordinance, one can also say "I cannot make any comment" or "I do not remember", only that this would appear rather strange. However, if someone can prove that the person saying so actually remembers it, this person would be in big trouble.

Therefore, I really do not understand the so-called prosecution or defence mentioned by Ir Dr LO Wai-kwok. Of course, the SFC can institute prosecution



against other people because it is its duty to enforce the Securities and Futures Commission Ordinance (SFCO). If criminal offences are involved, the SFC will surely be the prosecution. However, here, in this Council, the SFC cannot be described as the defendant. We will just ask some questions and that is all. Have Members ever attended those meetings? The lawyer would sit next to the person concerned and mutter a few words, or knock heads together like ants, then say that such and such a question cannot be answered and such and that question cannot be answered either. Have Members ever seen this? What can one do about this? We only wish to let all people who have the opportunity to observe the relevant meetings see how the people concerned answer questions. In fact, there is really nothing we can do about them, is there? In the same vein, when LEUNG Chun-ying came here to answer questions, surely that was a solemn enough affair? However, in respect of many things, he said that he did not remember them, he had no recollection of them or he had not talked about them. All that he said was based on the theory of two negatives make a positive, so after people had listened to him, they had no idea what he was talking about.

"Ah Kwok", what are you afraid of? Under the P&P Ordinance, if people of the SFC come here, it can only be ensured that they would not tell lies, or when they submit documents to the committee for scrutiny ..... Secretary, please look at me ..... even if one has a document in one's hand, one can still read out just half of it and like you, you can also read out just half of the document. However, if you submit the document to me, of course, I would query why you have only read out the first sentence but not the second one, having skipped a sentence. Someone is very good at telling only part of the truth, and Members all understand this.

Therefore, the first question that Members have to understand is: No matter what the SFC says, even if what it says is the evasive speech mentioned by "Buddy Yuk-man" — that is, the last type among the four bad things, namely, the words are all evasive when one has nothing else to say — we need an appropriate procedure to pursue accountability. This is because the SFC has to enforce the SFCO, so it has to produce documents to tell us which part was enforced, which part was not enforced and the reasons for doing so, as well as why a certain part that would normally be enforced was not enforced in that particular incident. However, at present, can I ask the SFC if it has dealt with such matters and if relevant legislation is available for comparison? I cannot do so.

We say that we want to conduct an inquiry into the SFC because it is suspected that irregularities occurred in the entire process of the regulation of the HKMEx by the SFC and if there are irregularities, what are the reasons for them? This has to be investigated carefully. In fact, only we have the power to conduct an inquiry into the SFC, is that right? In that case, why do we not investigate it? Mr Christopher CHEUNG also said that the approach adopted by the SFC this time around was different ..... "Yuk-man" said that one should not say "大細超 (big and small eyes)", so can one say "the third eye"? Can one say "different yarksticks" or "differentiation of affinity"? Can one say "turning a blind eye"? Ms Starry LEE, it is more refined to say "turning a blind eye" and this is also a Cantonese slang.

Did the SFC turn a blind eye? Therefore, on this issue, Honourable colleagues cannot possibly oppose my proposal to conduct an inquiry. If it is found after inquiry that there are no problems, all would be well ..... Ms Starry LEE, conduct an inquiry once and if it is found that there are no problems, the inquiry can then draw to a close. Members who oppose the opposition, do you still remember Mr KAM Nai-wai? There was not even any witness in the incident relating to Mr KAM Nai-wai and even though the person involved said that since a settlement had been reached, she would not attend anything, the inquiry still continued nonetheless. At that time, I already said that we had better stop, but Members maintained that the inquiry would not be a waste of time. At that time, did Members attend the meetings only with their bottoms but their heads were somewhere else?

Members, this is really differentiation of affinity. What did Mr KAM Nai-wai do? Frankly speaking, I did not want to know either. What effects did he have on Hong Kong? However, now, the SFC has let the favourite or the best boy of the emperor slip past the net, so of course, this is unacceptable.

Second, the police are surely not a party to be held accountable because the SFC handed this case to them. Another point is that according to information, by 2010, that Barry CHEUNG was borrowing money had become common knowledge and he borrowed \$8 million from CHIM Pui-chung. I dare not even borrow \$800 from CHIM Pui-chung, buddy. Since I know him so well, am I not afraid of being scolded by him? He may say, "Go away. Beat it." Barry CHEUNG borrowed \$8 million through a third party to pay the rent. The chronology is that his esteemed business had no money to pay the rent and he was

pursued for two months of rent, so an amount equivalent to about two months of rent was borrowed to pay the rent in arrears. Buddy, was the SFC not aware of all these? What do the integrity checks on Executive Council Members look into? Even when Barry CHEUNG owed others mountains of debt, he still did not have to make any declaration to the Chief Executive. This is precisely a loophole that must be plugged in the future. To conduct an inquiry into this point is useful for the future as changes will be made.

If I had five residential units that are still on mortgage and they were all given to me by Henry CHENG, I would not be allowed to serve as a Member of the Executive Council. Therefore, such a requirement is beneficial. After integrity checks had been carried out on Executive Council Members, it would surely be known that Barry CHEUNG had borrowed so much money that it was known to all people and that even with regard to people whom he did not know, he still borrowed money from them through a third party. After it was known that he had been involved in such conduct, why was he still invited to join the Executive Council? Even though he did not have to make any declaration, after it was known that he was involved in borrowing money, why was he still asked to serve as a Member of the Executive Council?

In the final analysis, this is all because of this photo. Members, please look at these two people who put their thumbs up together in the photo. This one is Barry CHEUNG. He exerted himself mentally and he really sacrificed himself for the sake of others. When the HKMEx operated by him was in difficulties and when he had to borrow \$8 million to pay the rent, he still bent over backwards to help LEUNG Chun-ying. Buddy, he really exerted his utmost out of passion and personal loyalty.

Third, although the Chief Executive knew that Barry CHEUNG was waist-deep in debt, he still reappointed him as a Member of the Executive Council. This is no laughing matter. Why did this company called United Company RUSAL have to pay him millions of dollars each year? All because he was an Executive Council Member. This is just like the younger female cousin of "covetous TSANG". With each promotion that "covetous TSANG" got, she also rose through the ranks in the Standard Chartered Bank. Now, does this incident not bear some resemblance to this example? Buddy, do you mean this is sheer coincidence? Members, after Executive Council Members had gone through integrity checks, LEUNG Chun-ying surely knew that Barry CHEUNG

was waist-deep in debt but if he pretended not to know about this because there was no requirement that Barry CHEUNG had to make any declaration and he went on to appoint him, so there is nothing that I can say about this. However, the interests thus brought by this move are very clear.

Today, the press reported that after LEUNG Chun-ying had taken office as the Chief Executive, the turnover of the HKMEx skyrocketed and fell only when it was found that a "cavern" had been dug at LEUNG's residence. In other words, when LEUNG Chun-ying got problems, Barry CHEUNG also came to grief. Buddy, of course, I need to investigate why LEUNG Chun-ying still wanted to break the norm by appointing such a person after looking at the results of Barry CHEUNG's integrity check. If LEUNG Chun-ying were running a business, he would not do this because Barry CHEUNG had to borrow money through a third party and he did not even have any money to pay off the debts. Even his cheques were bounced, so if the DTZ owned by LEUNG Chun-ying were to do business with him, it would just be a waste of time. In view of this, this appointment only amounted to damaging public interest for the enrichment of individuals.

The fourth point is that in the face of Secretary Paul CHAN here, I once exposed the fact that ..... he should have heard it, even though at that time, "YUEN Qiu" interrupted but still, he should have heard it. Although Secretary Paul CHAN had learnt about this matter in public, he still proposed that the rules be broken — since the term for a public office cannot exceed six years — so that he could continue to serve as the Chairman of the Board of the Urban Renewal Authority (URA). The URA often co-operates with property developers and it states clearly that it operates on commercial principles. This was said by Barry CHEUNG himself. He was rumoured to have received a loan amounting to \$700 million from Henry CHENG at an interest rate of 1%. President, I also want to borrow a little bit of money and do you also want to do so? One can use this amount of money for usury. On such matters, a person with power should know when to advance and when to stop. Does he know about "in a melon patch or under a plum tree"? Do not talk about "big and small eyes" all the time. As the saying goes, "don't tie your shoelaces in a melon patch, and don't adjust your hat under a plum tree", right?

What kind of system is this? Paul CHAN is also a "LEUNG's fan"..... I think Secretary Prof K C CHAN is probably not a "LEUNG's fan". In that case,

he will probably "fail" soon because he is not a "LEUNG's fan". Paul CHAN said that he did not know about his being waist-deep in debt. Even though Barry CHEUNG "defecated involuntarily, so much so that this could be seen everywhere" and the stench was unbearable, Paul CHAN was inured to the foul smell over time. Even though Barry CHEUNG was debt-ridden, he still made the proposal to John TSANG, who then told LEUNG Chun-ying that there was no problem with the "king of all fans of LEUNG", that he could go on to take up public office and that he could continue to serve in public office, so that he could continue to "gamble" using the big platform.

When the tree falls, the monkeys scatter, so since LEUNG Chun-ying has got into troubles, so the HKMEx came to grief too. Despite the integrity check and knowing that Barry CHEUNG was waist-deep in debt, they still pretended not to know about this and it was arranged that a brother under the accountability system — Paul CHAN, who is also a "LEUNG's fan" — would pretend not to know anything and allowed Barry CHEUNG to remain in his post until the matter was exposed and until it really could not hold and there was really no more money. President, frankly speaking, I am also in the bureaucratic circle and last year, I already heard that Barry CHEUNG had got problems, so each time I saw him, I would shun him.

Therefore, how possibly can we not hold them accountable? Those people also include Secretary Prof K C CHAN, although his post is somewhat less significant. Does anyone mean that he has never heard of this? Does anyone mean that over meals with tycoons, he only talks about policies? There surely must be rumours because in that circle, people use rumours as favours. How possibly can Secretary Prof K C CHAN say that he had no knowledge of that? Does he have the guts to swear? What is his faith? Does he have the guts to swear that if he was not really unaware of that, he would be struck by a thunder bolt? If he swears, I will immediately pardon him.

Still less is it necessary to talk about the Chief Executive and the Financial Secretary, John TSANG. On the integrity checks conducted by the SFC and the Executive Council, the accountability officials, the Chief Executive and the Financial Secretary all have to give accounts on why such a situation has arisen. In this matter, not only are some outdated systems involved, the questions of whether or not there are problems with the laws relating to the SFC and whether or not there are problems with the arrangement of the SFC being accountable to

accountability officials and the Financial Secretary are also involved. All these are matters of politics. What is politics? Politics is the focalized manifestation of the economic activities, and politics is to counter power with power and to use the legislature that has public mandate to counter an executive with no public mandate.

If we do not do such things, what else should we do? What is the point of staying here? It is a waste of money, so one may as well go home early and sleep. Well, what did these Members do in the past? They conducted an inquiry into KAM Nai-wai, but what bearing did the subject matter of that inquiry have on public interest? President, times have changed. A lot of people were mobilized to investigate a small man, or a male chauvinist. Now, we want to conduct an inquiry into several big men, one called LEUNG Chun-ying, one called Barry CHEUNG and another is called Paul CHAN. The latter two are "LEUNG's fans", so it is said that there is no need to conduct an inquiry in relation to them. Can Members say if this is fair?

Let me tell Members that it is useless no matter what you say. I will surely upload this debate onto YouTube. If you have the guts not to conduct an inquiry and in the future, if it is found after inquiry that there are problems and they involve issues that we have found out in the inquiry, you have to bear the consequences. Let me tell Members that the police will not investigate the matters to be investigated by us. The police are ..... the defendants have the right to remain silent and choose to answer questions unrelated to the case. May I ask how the police can investigate? Do you mean Mr Jasper TSANG should be asked to write to the Commissioner of Police to obtain all the information and give it to us? This is really a waste of time. If one wants to vote, just do it, and if one does not, so be it but they must not apply double standards.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Kwok-hung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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

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

Functional Constituencies:

Mr Albert HO, Mr Frederick FUNG, Mr Vincent FANG, Mr CHEUNG Kwok-che, Mr Frankie YICK, Mr Charles Peter MOK, Mr Dennis KWOK and Mr IP Kin-yuen voted for the motion.

Dr LAU Wong-fat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr Tony TSE voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr James TIEN, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK

Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the motion.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Michael TIEN, Mr LEUNG Che-cheung, Miss Alice MAK, Dr CHIANG Lai-wan and Mr Christopher CHUNG voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, eight were in favour of the motion and 20 against it; while among the Members returned by geographical constituencies through direct elections, 32 were present, 20 were in favour of the motion and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negated.

**PRESIDENT** (in Cantonese): The third and the fourth Members' motions. These are two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of motions each may speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendments; the movers of amendments each may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

**PRESIDENT** (in Cantonese): Third Member's motion: Concern about the expenditure of the West Kowloon Cultural District project.

Members who wish to speak in the motion debate will please press the "Request to speak" button.

I now call upon Mr Christopher CHUNG to speak and move the motion.



## **CONCERN ABOUT THE EXPENDITURE OF THE WEST KOWLOON CULTURAL DISTRICT PROJECT**

**MR CHRISTOPHER CHUNG** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, the West Kowloon Cultural District Authority (WKCDA) was established in 2008 and given a one-off upfront endowment of \$21.6 billion by the Government to take forward the West Kowloon Cultural District (WKCD) project. However, in the past few years, the WKCDA has made serious mistakes. Apart from the management mess, its black-box approach in recruiting senior staff and the procurement of collection has also been detached from the local arts sector. Moreover, it has failed to hold the strings of the purse properly in controlling its cost. As a result, the WKCD project is severely over-budget, where the construction expenditure may exceed \$40 billion, and the project may likely be turned into a "fiscal black hole". If the problem of the WKCD is not address seriously to correct the mistake, I am afraid the WKCD project will become a "white elephant project". Hong Kong people do not wish to see these disastrous scenes. The motion debate today has attracted 10 Members to propose amendments, evident that the question has aroused concern in society, and Members need to discuss the question and urge the Government to make proactive efforts to address the problem.

In the face of this unprecedented "fiscal black hole", the WKCDA and the Government have advanced a series of excuses in defence, claiming that the increase should be attributed to the drastic rise in construction costs in recent years, and thus the application for supplementary provision should hardly be blamed. Many colleagues in this Council have echoed this view in succession, thinking that the authorities have no alternative but to apply for supplementary provision. They have rightly fallen into the trap set by the WKCDA.

President and Honorable Members, the expenditure problem of the construction works of the WKCD project is not caused by the drastic rise in construction costs but maladministration.

Recently, the media has exposed that the budget for the construction of the M+ Museum in the WKCD can be lowered from \$7-odd billion to \$4-odd billion. It is absolutely ridiculous. Following this logic, we may come to the deduction that the construction cost of the Xiqu Centre needed not be increased from

\$1.3 billion to \$2.7 billion, and a budget of \$1.7 billion to \$1.8 billion will be more than sufficient.

Hence, the Government should face squarely and handle properly the maladministration problem of the WKCD. It should stop adopting the ostrich approach. If it continues to cover up the administration problem with the pretext of the drastic rise in construction costs, and allege that an increase in plot ratio or an undertaking of the infrastructure cost by the Government will solve the problem, I believe no matter how much supplementary provision is approved, it will not be sufficient to fill up this "fiscal black hole" of the WKCD project. This fiasco playing at the "West Kowloon opera house" will never end.

Next, I will come to my analyses of the four sins of administration of the WKCD.

First sin, it has appointed an unorthodox Board. Is the Chief Executive Officer (CEO) of the WKCD the puppet or the Board of the WKCD the puppet? We can hardly tell which is the marionette? How can the Board holding assets of \$21.6 billion and the right to use 40 hectares of land just convene a meeting lasting for two to three hours once every two to three months to manage the huge West Kowloon project?

In the year 2011-2012, the Board held six meetings to handle a vast number of issues. These included making the decision on the public engagement exercise, submitting the development plan to the Town Planning Board, setting up various committees, formulating risk management policies and finance and investment strategies, and so on. The Board is chaired by the Chief Secretary for Administration and its members are all social celebrities, who are extremely busy. It seems that the Board is surprisingly efficient, for it managed to make all the above decisions in the course of only six meetings. Who could have affected the decisions of the Board in such a short time? The most plausible explanation is that the Board, manipulated by the CEO and the management, has become a rubber stamp.

Back then, at the discussion of the Legislative Council on the WKCD project, the number of meetings held to examine the West Kowloon Cultural Development Authority Ordinance and the budget of \$21.6 billion must be more than a few times. Had the Legislative Council agreed with the implementation

of the WKCD project by holding just a few meetings, I believe society would have criticized the Legislative Council as being a rubber stamp. Is this not more of a concern to the WKCD which has safely pocketed \$21.6 billion?

President, among the boards of public and private organizations, as well as listed companies, none is comparable to the WKCD Board in being irresponsible or failing to be responsible.

Second sin, it is the wrong appointment of the CEO. In my view, regarding the serious administration problem of the WKCD at present, the previous-term Government should take the greatest blame. They adopted the wrong logic in their concept of appointment, thinking that the appointment of a foreigner as the CEO of the WKCD would definitely work and surely make the WKCD famous. We should ask why a foreigner must be appointed. Is their unfamiliarity with Hong Kong and the arts and cultural environment in Hong Kong considered their advantage? Are they considered a puppet which can be manipulated by the Government more easily in future?

Back then, during the recruitment of the CEO, the WKCD had launched a high-profile worldwide recruitment exercise. But since the requirements were harsh, say with 20 years relevant working experience, suitable candidates could not be identified in Hong Kong, and eventually Mr Graham SHEFFIELD was appointed. In the Board, he was the one who was most unfamiliar with the situation in Hong Kong. As a result, the authorities employed a CEO's Office Director at an annual salary of \$2-odd million to take care of Graham SHEFFIELD. Regrettably, things had not fared well as expected. Mr Graham SHEFFIELD had been down and flew away after serving on the post for less than six months. However, the WKCD had not learnt a lesson but insisted on employing a foreigner to take up this important post. The incumbent Chief Executive Officer, Mr Michael LYNCH, is earning an annual salary of several million dollars.

I have to clarify here that I am not being racist and I am not pinpointing against foreigners. I only hope that the WKCD can employ the suitable candidate based on suitable and reasonable requirements. I have to point out that the Board has failed to recognize the inherent inadequacy that the foreign CEO does not have sound communication with the local arts sector. The foreign CEO earning an annual salary of several million dollars had only visited Hong

Kong twice for sightseeing when he was young, yet he was said to be familiar with Hong Kong. In fact, he knows nothing about the cultural and arts environment in Hong Kong. What expectation should we hold for him in promoting the culture and arts in Hong Kong?

If Hong Kong is to develop the WKCD into a landmark which Hong Kong people will be proud of, as well as a project conducive to the cultural and arts development of Hong Kong, the "butler" responsible for the project should at least have some knowledge about the arts sector of Hong Kong. As in the case of finding a chef to promote Chinese cuisine to the world, it is unreasonable to find a chef of Western cuisine to undertake the task. It is true that the Western chef knows the tongue of foreigners, yet he knows nothing about Chinese cuisine, if so, how can you expect him to do a good job of promoting Chinese cuisine? It is really ridiculous.

The current-term Government has not only failed to review this appointment approach, but it has accepted this completely. It simply allows the mistake of the previous-term Government to run its course.

Third sin, it has adopted black-box operation. The lack of transparency of the decision-making process of the WKCDA has aroused suspicions of black-box operation, which is a reflection of the substandard management of the WKCDA. The Board has held 28 meetings since its establishment in 2008, but only six meetings were open to the public, whereas the remaining were all closed meetings. Surely, I understand that it is impossible to make all meetings open, yet the operation and decision-making process of the WKCDA are carried out entirely behind closed doors, where outsiders know nothing about its operation and how the money is spent.

Even though the WKCDA has set up the Consultation Panel, it fails to enhance the transparency of the operation of the WKCDA. The Consultation Panel is claimed to be the bridge between the WKCDA and the public high-soundingly, yet it is only a facade. The Consultation Panel has only held 10 meetings since 2009. If so, how can it enhance the public's understanding of the operation of the WKCDA?

The most obvious example of the WKCDA being in a state of anarchy is the procurement of the collection of Uli SIGG for M+ Museum. The WKCDA

had been negotiating with Uli SIGG about the transaction for one and a half year. However, during the course, it had not approached any independent experts for assessments or opinions, and only a minority of the members of the Board and the management knew of the discussion. If this is not black-box operation, what is it? In June 2012, the WKCDA passed the procurement strategy on museum collection, but at the same time, it decided to spend \$177 million on the procurement of 34 collection items from SIGG. In other words, prior to the formulation of the collection procedure, someone had started negotiating with Uli SIGG about the collection privately. Someone had obviously jumped the gun in doing so.

President, nearly \$200 million public money was spent in such a hasty manner on the procurement of a batch of so-called works of art, which has not been assessed by any experts. Are they regarding people under the Peak in Hong Kong dumb? Have the Audit Commission and the Independent Commission Against Corruption followed up the case and investigated it?

Fourth sin, it has been profligate in financial management. The WKCDA has only been concerned about holding architectural competitions. It has employed consultants from various places and rented top grade office premises, evident that the senior management of the WKCDA has been profligate and extravagant in spending. Take the design competition of the Xiqu Centre as an example. Among various assessment criteria, the cost aspect only accounts for 10%. Doubtlessly, the WKCDA has adopted an approach of putting design before cost, and it reflects that the WKCDA has no intention at all to control costs.

Apart from this, the WKCDA is also paying consultancy fees of \$300 million, rent for Grade A office premises and management fees of \$35 million and salary for senior staff of \$28 million. All these have given the public the impression that the WKCD project is only an extravagant project squandering money made by taxpayers with sweat and blood.

Recently, in the face of tremendous pressure, the WKCEA has announced that design competitions would not be held for future construction works, and it would instead adopt the simplicity construction approach to reduce construction costs. Is it really the case? It will be another attempt to hoodwink the public. If the WKCDA does not improve its mode of financial management, this

simplicity approach may only result in wastage and ugly structures. With a sound mode of financial management, design competitions may also bring forth beautiful architecture which is value-for-money.

For these reasons, I have the following proposals. President, the WKCDA is holding \$21.6 billion worth of asset and managing \$40 hectares of land, so the asset and power it has is comparable to any one of the major listed companies. However, all these come from the money taxpayers have toiled to earn. So how can the money be spent arbitrarily by the management of the WKCDA for the establishment of an "independent kingdom"? The problem must be tackled at root in order to change the poor management of the WKCDA.

First, it is about the Board. The Board is the core of the organization. It has actual powers, responsible for formulating the vision and mission and deciding the operating strategy of the organization. Hence, the authorities should restructure the Board according to the principles laid down in the Companies Ordinance, appointing persons with knowledge of arts and good liaison with the arts sector of Hong Kong, as well as management professionals experienced in managing large organizations and listed companies, as members of the Board. By doing so, the restructured Board will be able to fulfil its function as the professional directors and lead the WKCDA back onto the right track.

Second, it is about the CEO. Since the CEO is crucial to the implementation of the WKCD project, the appointee must be competent. In this connection, the contract of the incumbent CEO is expected to expire in next July. The authorities should assess his performance carefully according to stringent requirements, and his contract should only be renewed if he passes the assessment. We are not pinpointing Mr Michael LYNCH, but it is the obligation of the authorities to be accountable for the performance of senior staff. In the case of the CEO of a large enterprise, if his management ability is limited, if he will only spend money and if he fails to maintain a close relationship with stakeholders, the large enterprise will definitely consider replacing this CEO to show that it is being responsible to its shareholders.

With these remarks, President, I urge Members to support my motion. Thank you, President.

**Mr Christopher CHUNG moved the following motion: (Translation)**

"That, the West Kowloon Cultural District Authority (WKCD) was established in 2008 and given a one-off upfront endowment of \$21.6 billion by the Government to take forward the West Kowloon Cultural District (WKCD) project; however, it has been confirmed that the construction cost of the Xiqu Centre, one of the Phase 1 cultural and arts facilities to be completed in 2016, increases drastically from the estimated \$1.3 billion to \$2.7 billion, making people worry about the WKCD project turning into a 'fiscal black hole'; given the possible serious overspending of various works under the WKCD project, this Council urges the Government to examine afresh the construction expenditure of the project, expeditiously give the public an account of the relevant particulars, formulate with WKCD a more effective cost control proposal, increase the transparency of the expenditure of the WKCD project, and enhance its reporting to this Council on the progress and financial position of the WKCD project, so as to avoid the WKCD project not being monitored and becoming a 'white elephant project'."

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

**PRESIDENT** (in Cantonese): Ten Members wish to move amendments to this motion. This Council will now proceed to a joint debate on the motion and the 10 amendments.

I will first call upon Mr Tony TSE to speak, to be followed by Miss CHAN Yuen-han, Dr Priscilla LEUNG, Ms Cyd HO, Mr Charles Peter MOK, Mr MA Fung-kwok, Mr Alan LEONG, Mr Albert CHAN, Ms Claudia MO and Ms Emily LAU respectively; but they may not move amendments at this stage.

**MR TONY TSE** (in Cantonese): President, first of all I wish to thank Mr Christopher CHUNG for moving the motion on "Concern about the expenditure of the West Kowloon Cultural District project" today. As early as in 1998, the

then Chief Executive TUNG Chee-hwa announced in his Policy Address that he wished to establish Hong Kong as Asia's cultural and arts hub through the development of the West Kowloon Cultural District (WKCD). It was the origin of the idea of the current WKCD development. Over the last decade or so, the development of the WKCD, including its mode of development, invitation to developers, tender arrangements and the resignation of the former Chief Executive Officer of the West Kowloon Cultural District Authority (WKCDA), has been an issue of concern which gives rise to widespread discussions. Regarding the recent issue of overspending, it is estimated that the whole WKCD project may run over budget by 100%, or more than \$20 billion. It makes people worry indeed about the extra costs for Hong Kong to complete this entire project. What will the WKCDA do to step up cost control? When the WKCD project completes, will the cost problem make it completely different from its original plan and fall far short of the expectations of the public and the cultural and arts sector? All of these are issues of concern to us.

In my amendment to today's motion, I have made three major points. Firstly, the construction cost of the Xiqu Centre (Phase 1) increases drastically from the estimated \$1.3 billion to \$2.7 billion, and although the WKCDA has indicated that it will strive to prudently contain the cost within \$2.7 billion, people are still worried about the WKCD project turning into a "fiscal black hole". Secondly, among the assessment criteria of the Xiqu Centre design competition, the "cost aspect/value for money" factor only accounts for 10%, which is very low, making people question the degree of importance attached by the WKCDA to the value-for-money aspect of the entire WKCD project. Thirdly, the Government should formulate with the WKCDA a more effective cost control proposal, which includes giving more consideration to value for money and pricing in respect of the design assessment, selection of works materials, tendering arrangements and scale of works, and so on, of the WKCD project, increase the transparency of the expenditure of the WKCD project and make proper use of public money.

President, in February this year, when the WKCDA reported to the Legislative Council the progress and results of the Xiqu Centre design competition, it already made it clear that, because of the surge in construction costs, the estimated cost of the Xiqu Centre (Phase 1) and its ancillary facilities had soared to \$2.7 billion. Will the pricing of this project continue to increase?



Neither the Government nor the WKCDA could give us a definite answer. The WKCDA just replied that it would strive to prudently contain the cost of the Xiqu Centre (Phase 1) within \$2.7 billion. How determined is the WKCDA in cost control? What specific measures will be taken to achieve effective cost control? Is the overspending simply caused by inflation and the rise in construction costs? Or are there any other reasons? The Government and the WKCDA should give a detailed account for all this as soon as possible.

Many people believe that the overspending in the construction of the Xiqu Centre (Phase 1) may only be the tip of the iceberg in the entire WKCD project. Of course, we do not wish to see this situation arise, but the present circumstances do not give us much optimism. Therefore, the Government and the WKCDA should expeditiously examine afresh the construction expenditure of the entire WKCD project, and work out some preventive and contingency measures for the possible serious overspending. These measures may include cancelling or postponing cost-ineffective projects where necessary, and imposing stringent cost management to prevent by all means the explosion of other "bombs of overspending" or even the forming of a "fiscal black hole".

Moreover, at the meeting of the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project in February this year, I questioned whether the WKCDA had taken the value-for-money aspect lightly in the WKCD project as the "cost aspect/value for money" factor only accounted for 10% among the assessment criteria of the Xiqu Centre design competition. The WKCDA later replied in its written response that cost consideration was not usually included as a standalone adjudication criterion in international design competitions. However, in reality, the Xiqu Centre is a performance venue. No matter how magnificent its design may be, we must not overlook considerations like costs, value for money, practicality and the convenience of performers and audiences as it will discourage organizations from renting venues in the Xiqu Centre and members of the public from spending on the performances staged there. Consequently, the huge spending on the construction of the Xiqu Centre will be a complete waste of money, tantamount to dumping money into the sea. What is more, a wonderful design does not always imply high construction costs.

Yet, I have to clarify one point. In the implementation and execution of WKCD project, I do not just care about the cost factor or economic benefits. I am also concerned about factors like building quality. However, as the Government has given me an impression that it does not care about value for money and the WKCD project may result in serious overspending, I have to urge the Government to pay more attention to cost-effectiveness of the entire project. President, today, I am proposing this amendment in the hope that the Government and the WKCDA will, first, take necessary actions to show us their sincerity and commitment in cost control, and second, become more cost cautious.

What should the Government do to show its sincerity and commitment? Among others, the original motion urges the Government to examine afresh the construction expenditure of the project and expeditiously give the public an account of the relevant particulars; and in my amendment, I suggest that the Government should formulate with the WKCDA a more effective cost control proposal, which includes giving more consideration to value for money and pricing in respect of the design assessment, selection of works materials, tendering arrangements and scale of works, and so on, of the WKCD project, in order to make proper use of public money. As a matter of fact, in the WKCD project, if the Government is willing to consider parcelling out its works projects for tender and allow more participation from local small and medium enterprises and professionals, it will be able to promote the policy of "local professions first" and enhance the performance of local professions. The use of public money will hence be more effective.

President, at this moment, there is no way to estimate the amount of overspending in the WKCD project. However, I hope that the Government will undertake to enhance its reporting to this Council on the progress and financial position of the WKCD project, make a detailed estimate on the costs of individual projects, report to the public the reasons for the serious overspending, and formulate cost-saving proposals to give more consideration to value for money and cut costs purposefully. All this will prevent the WKCD project from becoming a "white elephant project".

Thank you, President. With these remarks, I hope Members will support my amendment.

**PRESIDENT** (in Cantonese): It is now about half an hour before 10 pm. I will suspend the meeting after Miss CHAN Yuen-han, Dr Priscilla LEUNG and Ms Cyd HO have spoken.

**MISS CHAN YUEN-HAN** (in Cantonese): President, why are we so concerned about the costs of the West Kowloon Cultural District (WKCD) project? Objectively speaking, the WKCD project is seriously problematic. A number of Members and I have criticized this project as a "squanderer", "spendthrift" and "unregulated high roller" before. However, some officials do not agree with our viewpoints and consider it natural for the costs to rise in six years. I cannot help asking: How many wage earners can see their salaries increased by more than double in six years?

I am most worried about this attitude of the officials-in-charge. Some people describe them as "muddle-headed". A works project which was supposed to cost \$21.6 billion is now estimated to cost \$47 billion. Yet, when there is such a big problem in front of them, they do not consider it a problem. I think this is the biggest problem with the WKCD project.

President, the following three points are the three major characteristics of the WKCD project. I will illustrate them one by one.

Firstly, to put it in a word: "expensive". As stated by the two colleagues just now, the construction cost of the Xiqu Centre alone has increased from \$1.3 billion to \$2.7 billion, of which over \$400 million is the consultancy fee. While the total cost of the WKCD project was originally estimated to be \$21.6 billion, the estimate has risen to \$4.7 billion. Why is it so expensive and the cost so high? I have looked into the reasons, and many are told by cultural and art workers and members of the public.

First of all, the WKCD project is just like a blank cheque. If the Government tells the construction company that the budget for the Xiqu Centre is \$1.3 billion, it will certainly control its costs in the construction process. Unexpectedly, the Government has not specified a ceiling for the construction costs. What will the construction company do then? It will definitely make the Xiqu Centre as extravagant as possible to satisfy the demands of its client.

While the cost has risen from \$1.3 billion to \$2.7 billion, is it enough? If not, they may do the same with the budget for the M+ museum next time. However, the Government has shown some changes.

Secondly, the WKCD project is just like an automated teller machine (ATM). The management of the West Kowloon Cultural District Authority (WKCDA) and some of the requirements are actually edging out local talents. For this point, I will come back to it later. When the project is required to use the so-called famous foreign brands, it will certainly be regarded as an ATM that attracts foreigners to draw money here. In this case, the project can never have sufficient funds.

Thirdly, the WKCDA is far too generous. President, two interesting thoughts have just popped up in my mind. First, as the WKCD project is just like a blank cheque and an ATM, the Labour and Welfare Bureau should learn from the WKCDA and be more generous. If it is more generous, the means test of the Old Age Living Allowance can be lifted. Second, I would like to ask Matthew CHEUNG to explain to Mr Michael LYNCH how tight the budget of Hong Kong is and why he should not waste our money. I think these two requests are not bad at all.

President, apart from being expensive, as I have just said, there is another major problem with the WKCD project. Many cultural and arts groups, as well as members of the public, have criticized it for xenophilia. To be more specific, such worship indeed suggests that the Government has very much looked down on local cultural and arts workers and management talents. I am not anti-foreign. However, after listening to the views of the community, including arts workers, I find the first problem with the Chief Executive Officer (CEO) of the WKCDA is that he does not know Chinese.

Of course, this CEO does not have to be very proficient in Chinese. As a matter of fact, many jobs in Hong Kong do not require a command of Chinese. However, this position is different. Local cultural workers generally hold that the cultural and arts development of a place is closely-related to local languages. As stated by Mr Christopher CHUNG just now, this young CEO had only visited the Mainland and Hong Kong for a few times. How can he be considered as familiar with our culture? In particular, Hong Kong is a place where people are

proficient in two languages and three dialects. Provided that we are now offering an annual salary of millions of dollars, is it really impossible to recruit a CEO with international outlook but is familiar with local arts? I do not think so. Neither can Hong Kong people resign to it.

Second, as stated by Mr Christopher CHUNG, the moon seems fuller in foreign land. That was why the WKCDA spent almost \$200 million to buy a collection from foreign art collectors. This amount accounts for one fifth of the \$1 billion budget for collection purchase by the WKCDA. Are there any criteria for the purchase of art collections? In contrast, the WKCDA has only spent \$50 million on buying local visual artworks. It has aroused great discontent among local arts workers as they think it is much too unfair.

Third, the WKCD project has a great problem in terms of facility management and administrative talents. I have strong views on this issue. I remember that in the construction of the Tsing Ma Bridge, which was a major works project, the authorities had said that there would be technology transfer. However, this is not found in the WKCD project.

I will not go into the details on this point. In respect of the plan of the WKCDA to employ overseas experts to manage the complexes in the WKCD, I must first clarify that we are not xenophobic. We just want to say that there are many local management talents in the industry. How should we give these talents an opportunity to learn in the project? Even if we admit that foreign talents are bright and outstanding, we must solve the big problem that local talents are not given any opportunities to learn from others and promote the development of local culture and arts. This really makes me puzzled.

Fourthly, in respect of design and architectural consultancy, we understand that for a huge project like the WKCD project, it really needs to have consultants. But why are local artists completely out of the picture? No wonder they are so angry. Many arts workers have told me their views on this issue, so this amendment proposed by me has also taken on board a lot of advice from them. Therefore, this amendment may be regarded as "extremely comprehensive" for it has carried the views of many cultural and arts workers.

They are aggrieved because they do not think foreign consultants can completely replace experienced local artists who are familiar with local arts development. Without gauging or heeding the views of local artists, the WKCD has hired the so-called foreign experts who do not know much about Hong Kong to lead local artists who are familiar with Hong Kong and world cultures. How can it work? As the authorities refused to invite local artists and groups to join them in the planning process, the local arts sector has all along been denied a role in the WKCD. As a result, the entire WKCD project is in lack of community participation.

We once invited those in the arts and cultural sector for discussions on how best the communication could be improved. However, only one group accepted our invitation. Others replied that they did not have much communication with each other. It reflects how bad the situation is, and I hope the Secretary can understand this. In the early years, the WKCD had spent a lot of money to commission foreign consultants to produce a report. Yet, in the eyes of many artists, this report was not particularly insightful and could have been prepared by local experts at one tenth of the cost. In the Xiqu Centre, for example, \$452 million of the budget was spent on consultancy instead of construction. I hope the Government can really ponder over this view.

Another problem is that some of the venues are built only for the use of foreign performers. It shows that the authorities have considered this project as a project to build a new landmark. Right now, local arts groups cannot even afford a training venue in industrial buildings as the rents are too high. Upon the completion of the WKCD, how can its venues simply be used for the exhibitions of Picasso's paintings and the performance of foreign operas?

YUEN Siu-fai, a famous Cantonese Opera artist, had once made an excellent remark: "Can you turn a somersault like we do and sing our songs?" I was deeply impressed. Have the authorities ever thought about the needs of these artists? Have they carefully considered the name of the centre? When we first approved the funding, we intended it to be used for the promotion of cultural development and nurturing of local cultural talents. However, the outcome right now is entirely different from our expectation. There are now many grievances. Strictly speaking, we seemed like having asked for trouble by approving the funding. The current situation is just like what happened in the

old days in the foreign concessions in Shanghai. Locals are not allowed to make any contribution. Our aim is to promote cultural development but not to "build" culture with money.

President, the third characteristic of the WKCD project is "slow". I do not think I have to elaborate this point as some Members have already spoken on it. This project was first proposed in 1998. However, as the project proceeds, slow work has not given us fine products but expensive products. This project is carried out at an extremely unreasonable pace and unreasonable cost, but I am not going to speak too much on this as it has been mentioned by other Members.

The most worrying problem now is that all of the resources for the WKCD project have already been put into it. The authorities may fend off any views from local arts groups with this excuse. The cultural sector worries that the WKCD project may continue to drag on and cannot be completed before the arts and cultural communities extinguish.

President, Carrie LAM has recently said that there is no need to seek funding approval from the Legislative Council for the time being. I agree with her on this count, but I do not know about the details. However, I wish she can take account of the issues of "expensive", "xenophilia" and "slow" (*The buzzer sounded*) ..... and address the problems squarely.....

**PRESIDENT** (in Cantonese): Miss CHAN, your speaking time is up.

**MISS CHAN YUEN-HAN** (in Cantonese): ..... I hope the Government can face up to the problems squarely. Thank you, President.

**DR PRISCILLA LEUNG** (in Cantonese): President, culture exists everywhere, but I wish it is particularly rich in West Kowloon. As we all know, it has been 15 years since the development of the West Kowloon Cultural District (WKCD) was first proposed. This project should not be delayed anymore. On 18 November 2010, I moved the motion on "Territory-wide participation in building the West Kowloon Cultural District" to specify our expectations on the

WKCD. Three years have passed since then. During the interim, the West Kowloon Cultural District Authority (WKCD) has experienced a major management change. The WKCD is hence described as another Bermuda, and a number of colleagues have made the same comment just now. Even now, the resignation of Graham SHEFFIELD is still a mystery and an irony to Hong Kong and the WKCD.

In conducting district visits, we often heard people say, "What does the WKCD has to do with me?" For a huge project like the WKCD, does everyone or every citizen have a share in it? Is it a place only for wealthy car owners to enjoy shows and performances? What does the WKCD has to do with me? In my amendment, I have proposed the vision of "People's WKCD" (人民西九). I know Mr MA Fung-kwok prefers using the Chinese character "文" of "文學" to "民" in this context. To me, both "人文西九" (West Kowloon for the People) and "人民西九" (People's WKCD) are acceptable. I have proposed the vision of "People's WKCD" mainly because I hope the WKCD can be easily accessible to the general public so that they can feel that its development is closely-related to them.

The WKCD is the largest and most ambitious cultural development project since the inception of Hong Kong. People in Hong Kong have pinned high hopes on it. However, will the WKCD eventually be turned into a cultural concession? A "cultural concession" is a place where most of the Hong Kong people do not consider as their own cultural district. In addition, the WKCD is not easily accessible; therefore, people do not feel like it belongs to them. I think it is not something Hong Kong people would love to see.

In recent years — or as early as in 2008 — we have begun promoting the idea of "Creating a new West Kowloon" to the people in our district visits. We engage people to think about how the WKCD, the leading project, can be used to promote the development of the inland areas and the old districts. An old lady surnamed LEE often tells us that, after living in Sham Shui Po for years, she has long since not seen the harbour view. Her concern is whether the development of the WKCD will make it easier for Sham Shui Po residents to see the harbour view. For residents in Tai Kok Tsui, who can see the WKCD from far away, they consider the road along the harbourfront making the WKCD accessible. However, they do not want the odour of the harbour to reach them. They think



the odour carried by sea breezes is a wet blanket to foreign tourists who come to see the magnificent cultural construction of Hong Kong. On the other hand, some poor students ask if they have to pay before they can see the artworks in the WKCD. There are some 200 000 to 300 000 grass-roots people and workers in Hong Kong. They also ask: What does this large cultural development project has to do with them?

A few years ago, I joined more than 20 District Council Members from the Kowloon West New Dynamic and over 20 professionals, engineers and architects to make a proposal to the Secretary and the then Chief Secretary Henry TANG. We expressed our wish that the WKCD could be developed with cross-bureau efforts to make it a real leading cultural project to pull the development of old districts. Our first concern is whether the development of the WKCD can benefit the local economy, workers and professionals. Secondly, we are concerned about the accessibility of the WKCD and how to make it more accessible to residents in the old districts and the inland areas. Our third concern is how the WKCD can be connected with the Kai Tak Cruise Terminal, which was commissioned lately, and improve their surrounding environment and water quality. The fourth issue is that cultural and arts education is not popular in Hong Kong. Fifthly, we suggest that ethnic minorities should be given room in the WKCD to showcase their special cultures. For example, Bollywood movies can demonstrate the film art of ethnic minorities.

Regarding our first concern, that is, how to benefit the local economy, we have drawn reference from the "Bird's Nest" project in Beijing. We find that this project has absorbed the plans of many famous international architects. It was then split into various works projects, with some of them being transferred to benefit local professionals and workers. According to our understanding, 15% of its entire budget was spent on design fees and the remaining 85% on detailed design. Under this arrangement, most of the works in this project were done by local workers to benefit them. I hope that the present rise in construction costs will eventually benefit our local economy. If so, there will be less opposition from the public.

Our second concern is an environmental issue which has been discussed for many times. Regarding the problem of smelly waters between the Kai Tak Cruise Terminal and Tai Kok Tsui, I hope the Secretary can realize a promise

made by the former Chief Secretary Henry TANG back then, that is, to consider providing resources for building a beautiful promenade which starts from the WKCD according to the international requirements for water quality and outlook.

As for accessibility, we have proposed many times that a boulevard should be built to connect the WKCD so that the old and young, as well as lovers, can walk to the WKCD. We may even consider providing cross-harbour water taxis instead of relying on the traditional feeder service provided by ferries. The introduction of small-sized water-borne transport can also ease the transport pressure at the Kai Tak Cruise Terminal.

Fourthly, the development of culture and arts. I think, in addition to hardware, we must value artists and performers. After we have got the artists and performers, our consumers must not be ignorant of arts and culture. We must study how best our culture and arts can be industrialized like the Eslite Bookstore in Taichung. Through the industrialization of culture, this bookstore has successfully attracted people to spend on its services and cultural products. What is more, it has decorated its external walls with 100 000 plants, making itself an appealing landmark in Taichung.

Years ago, we arranged for the display of the Riverside Scene at Qingming Festival in Hong Kong. The response was overwhelming. Countless of children visited this exhibition. Recently, many people are crazy for the huge rubber duck. From these examples, we can see that the general public are thirsty for this kind of cultural consumption, and we are not doing enough in this aspect. Besides, our fundamental cultural education in primary and secondary schools is not up to standard, whereas many primary and secondary art teachers are not knowledgeable in this area. For what I know, there is an art teacher who has failed half of his Form One students. As a result, many students who were once interested in arts are terrified. I think this problem is related to the resources issue. I hope the WKCD can forge more collaboration with the Education Bureau to nurture the cultural and artistic qualities of the people.

As far as I can remember, regarding the motion which I moved years ago, there was an amendment proposing the establishment of a Culture Bureau. This amendment was unanimously agreed by the Legislative Council Members then. At that time, we were all excited about this idea, wishing that the Culture Bureau

could take the lead in cultural development. Regrettably, we cannot set up the Culture Bureau now. However, I still hope that there can be cross-bureau co-operation. As I have stated just now, the Chief Secretary for Administration, the Home Affairs Bureau, the Transport and Housing Bureau, and the authorities in charge of environmental issues of the harbour should work together to make the WKCD a successful international cultural development project in terms of hardware. In terms of software, they should co-operate to nurture culture and arts appreciators among our consumers such that culture and arts can take root and become industrialized in Hong Kong. By doing so, they can develop the WKCD into a place with both an appealing outlook and impressive culture to make us proud.

Thank you, President. I so submit.

**MS CYD HO** (in Cantonese): Originally, I planned to read out my drafted speech on Cantonese opera and culture. However, after listening to Mr Christopher CHUNG's speech, which was so harsh and so different from the wording of his original motion, as well as the speech of Miss CHAN Yuen-han, I must respond to them before all else.

Mr Christopher CHUNG named four sins. One of them is the infrequent Board meetings. However, it is actually commonplace all statutory bodies. Second, the foreign officers appointed are incompetent. Nonetheless, the reason for Mr Michael LYNCH being appointed as the Chief Executive Officer (CEO) was that he was the Chief Executive of London's Southbank Centre, which may be described as a mini-West Kowloon Cultural District (WKCD). He was appointed for his rich experience as plenty of events are held in the Southbank Centre. Meanwhile, Dr Lars NITTVE, the former Director of the Moderna Museet at Stockholm, Sweden, was appointed as he is experienced in managing museums. Both of them are believed to be competent to nurture our audience. In addition, they are adept at fund-raising.

Regarding the Board, its ex-officio members include the Secretary for Home Affairs and some other officials. It is certainly our wish for the Board to hold more meetings and avoid black-box operation. As far as I can remember — though I was not a Member at the time of legislation — some democratic

Members had proposed amendments to request open Board meetings. Ms Emily LAU and Mr Alan LEONG should remember this. At that time, Members from the Democratic Alliance for the Betterment and Progress of Hong Kong voted against those amendments. Therefore, it is just ironic for them to accuse the meeting practice of the West Kowloon Cultural District Authority (WKCDA) as a sin today. It has only been seven years since 2006, how can they change their stance so quickly?

On the purchase of art collections by museums, they have criticized the WKCDA for missing out on local artworks. This issue involves a scramble for resources. If the Audit Commission or the Independent Commission Against Corruption is to be invited to conduct an audit or investigation, we will strongly support this request. However, these two Members do not usually take this stance, and it makes me feel that they have crossed swords in their comments. Just now, Miss CHAN Yuen-han has criticized that it is unreasonable for the consultancy fee to reach \$400 million; but at the meetings of the Public Works Subcommittee, we had actually questioned for a few times why the Government had to spend 16% of its budget on consultancy in each and every project, regardless of whether the project cost is high or low. A consultancy fee of \$400 million is exactly 16% of \$2.7 billion. I call on all Members, including those who have made criticisms today, to join us at the next Public Works Subcommittee meeting to ask the Government not to blindly set its consultancy budget at 16% without considering the amount of project cost. This warrants a review.

In the Express Rail Link project, which is estimated to cost \$67 billion, the consultancy fee is again 16% of the project cost. Nevertheless, none of you had raised criticism of it. All you did was to vote for the Government. This time, the project only costs \$2.7 billion but its consultancy budget is disapproved. In fact, lots of problems in this project originate from the long-standing bad practices in respect of the Government's public works. On resource allocation, there were many cases in which resources were not evenly allocated, and this problem is also found in this project. Yet, they now want to hold a new expatriate CEO responsible for it. A Member has just blamed him for not communicating with local groups. As a matter of fact, Liza WANG Ming-chun and YUEN Siu-fai, members of the Chinese Artists Association, who came here the other day, had praised the management of the WKCDA for maintaining good

communication with them. After a number of meetings, the WKCDA decided to provide education facilities in the Xiqu Centre. This piece of news was told by the Secretary. As the new education facilities were not included in the initial budget, the construction cost is hence driven up. This is point one.

Second, many works projects after 2008, including the expansion of university campuses and the construction of student hostels, had sought supplementary appropriation of 60% to 70%. Every time, we showed our understanding and approved their supplementary appropriation after listening to the Government's computations. None of us raised objection in the past. The same thing happened to the works project which connects village sewerage systems with sewers. This project has also sought a supplementary appropriation of 70%. As for the Xiqu Centre in the WKCD, its construction cost has also risen by 70% from \$1.3 billion to \$2.7 billion to cover the newly-added education facilities and the consultancy fee which always stands at 16% of the whole budget.

President, if we have to settle the scores, we should take the big picture into consideration. Given that our cultural funding is often insufficient, only \$21.6 billion was allocated for the development of the WKCD. I now say it loud and clear that I support providing supplementary appropriation to the WKCD project as the budget of \$21.6 billion is far from sufficient. In this sum, only 5% (or about \$1.1 billion) is used for developing cultural software. Yet, we have to educate our audience, perform art administrative duties and participate in overseas cultural exchange activities. While the annual provisions for the Leisure and Cultural Services Department (LCSD) and the Hong Kong Arts Development Council are \$1 billion and \$100 million respectively, the WKCD is only granted \$1.1 billion. Therefore, I strongly support the supplementary appropriation.

However, I also hope that the WKCDA and the Government will carefully monitor the costs and expenditure. A number of Members have talked about their worry for the serious overspending of the Xiqu Centre as it is only the first facility. Now, I am going to explain why I support adding education facilities to the Xiqu Centre. Years ago, we sought to inscribe Cantonese opera onto the List of the Intangible Cultural Heritage because its history, troupes, bamboo theatres, postures, roles — male lead (生), female lead (旦), painted face (淨), male role

(未/mo) — expression in eyes, hand movements, scores, scripts, gongs and drums are all valuable cultural heritage, and the new generation should learn about them.

In the 1950s and 1960s, we had artists like YAM Kim-fai and PAK Suet-sin to put the literary scripts of TONG Tik-seng on stage at the peak of their performing life. At that time, this kind of sophisticated culture was part of our daily life. Unfortunately, these great artists are now either old or dead. The beautiful art of Cantonese opera is no longer part of our life, with the Sunbeam Theatre being the last place left for the performance of Cantonese operas. Yet, the lack of performance venues is not the only problem. We need something more than venues. We need detailed teaching materials for students to learn this elegant and sophisticated culture.

In a script of TONG Tik-seng, he had borrowed a line from LI Qingzhao: "In the golden censer the burning incense is dying away (瑞腦消金獸)." It was so popular that people on the street could sing it. In those days, how could the Chinese proficiency be bad? President, Cantonese opera emphasizes pronunciation. How can "崇洋 (sung4 joeng4)" (worship of foreigners) be pronounced as "純洋 (seon4 joeng4)" (complete foreignization)? When I listened to the earlier speeches, I was very puzzled. How can there be "complete foreignization" in the WKCD? It took me some time to realize that the Member was meant to say "崇洋" (xenophilia). Cantonese opera is really a valuable cultural heritage which merits preservation. Therefore, I strongly support adding education facilities to the Xiqu Centre.

In respect of cost control, I hope that the Government and the WKCD can be prudent with it. It is better to keep the big park simple. I do not wish to see the authorities spending big on consultancy. Instead, it should pay attention to the bylaws on the management of the big park. The WKCDA must introduce better bylaws than that of the LCSD. It must allow members of the public to freely relax themselves in the park. Art comes from play. If people are not allowed to lie on the lawn or engage in other activities in the park, how can creativity be stimulated?

Besides, I have to point out that art may sometimes challenge the norms. In an earlier art exhibition, many people criticized one of the exhibits as "shit". President, I use this vulgar word intentionally. In fact, avant-garde artistic

expressions often pose challenges to our norms. For example, Isadora DUNCAN created modern dance by subverting Ballet; she paved the way for Pina BAUSCH to become the new classic. The waltzes of Johann STRAUSS were originally considered as decadent and crude, but it is now a European tradition to play waltzes in new year's concerts. Rock and roll, the symbol of passion, was once regarded as scourge; but now it is in the mainstream and may be played in grand concert halls. Therefore, I hope the community and we ourselves — Members who can promote cultural development by approving the funding — can cease saying that the "shit" is not an artwork, though this kind of avant-garde art transcends our cognition.

President, we need to have more exchanges with the international community. I hope the foreign experts appointed by the Government can add colours to Hong Kong culture. Also, I wish Members can refrain from criticizing others without considering the facts. We must not be anti-foreign. Thank you, President,

## **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): I now suspend this meeting until 2.30 pm tomorrow.

*Suspended accordingly at three minutes past Ten o'clock.*

## Inland Revenue (Amendment) (No. 2) Bill 2013

## Committee Stage

Amendments moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
3	In the proposed section 89(11) – (a) by deleting “(11)” and substituting “(10)”; (b) by deleting “Schedule 28” and substituting “Schedule 27”.
4	In the proposed section 95, by deleting “Schedule 29” and substituting “Schedule 28”.
7	In the heading, by deleting “Schedules 28 and 29” and substituting “Schedules 27 and 28”.
7	In the proposed Schedule 28, by deleting – “ <b>Schedule 28</b> ” [s. 89(11)] and substituting – “ <b>Schedule 27</b> ” [s. 89(10)].
7	In the proposed Schedule 29, by deleting “ <b>Schedule 29</b> ” and substituting “ <b>Schedule 28</b> ”.



**Appendix I****WRITTEN ANSWER****Written answer by the Government Chief Information Officer to Mr Christopher CHEUNG's supplementary question to Question 2**

In the past three years (2010 to 2012), the number of computer security incident reports received by the Hong Kong Computer Emergency Response Team Coordination Centre (HKCERT) was 980, 810 and 1 050 respectively. The HKCERT has not categorized the organizations or industries involved in the abovementioned figures.

With respect to technology crime on "unauthorized access to computer systems", the number of reports received by the police in the past three years (2010 to 2012) was 337, 567 and 1 042 respectively. The police do not maintain information on the types of the organizations or industries involved in such crimes and the related figures on detected cases.