

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 5 December 2012

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

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

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

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

THE HONOURABLE 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 KENNETH LEUNG

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

DR THE HONOURABLE ELIZABETH QUAT, J.P.

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

PUBLIC OFFICERS ATTENDING:

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

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

THE HONOURABLE RIMSKY YUEN KWOK-KEUNG, S.C., J.P.
THE SECRETARY FOR JUSTICE

PROF THE HONOURABLE ANTHONY CHEUNG BING-LEUNG, G.B.S.,
J.P.
SECRETARY FOR TRANSPORT AND HOUSING

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

DR THE HONOURABLE KO WING-MAN, B.B.S., J.P.
SECRETARY FOR FOOD AND HEALTH

CLERKS IN ATTENDANCE:

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

MRS JUSTINA LAM CHENG BO-LING, DEPUTY SECRETARY GENERAL

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, 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:

- No. 30 — Emergency Relief Fund
Annual Report by the Trustee for the year ending 31 March 2012
- No. 31 — Report on the administration of the Immigration Service Welfare Fund prepared by the Director of Immigration Incorporated in accordance with section 12(b) of the Immigration Service (Welfare Fund) Regulation
- No. 32 — Hong Kong Housing Authority
Annual Report 2011/12
- No. 33 — Hong Kong Housing Authority
Financial Statements for the year ended 31 March 2012
- No. 34 — The Government Minute in response to the 24th Annual Report of The Ombudsman 2012
- No. 35 — Ocean Park Hong Kong
Annual Report 2011-2012

Report No. 6/12-13 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

ADDRESS

PRESIDENT (in Cantonese): Address. The Chief Secretary for Administration will address the Council on "The Government Minute in response to the 24th Annual Report of The Ombudsman 2012".

The Government Minute in response to the 24th Annual Report of The Ombudsman 2012

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I would like to submit the Government Minute to the Legislative Council in response to the 24th Annual Report of The Ombudsman which was tabled before the Legislative Council on 11 July this year.

The Government and the relevant public organizations have fully accepted The Ombudsman's recommendations in respect of various investigation cases and proactively adopted various measures to implement the relevant recommendations, with the exception of some recommendations on an extremely small number of cases. As for these recommendations, the relevant departments have given an explanation to The Ombudsman as set out in detail in this Government Minute.

The Ombudsman has been playing a very important role in raising the quality of public services and the achievements over the years are evident to all. We will continue to work together with The Ombudsman in meeting the people's expectation on upgrading of the quality of services and enhanced transparency of governance. Here I thank The Ombudsman for giving various departments and public organizations valuable advice. We will keep a close watch on social developments and promote effective inter-departmental co-operation with a view to establishing a more closely knitted government and providing the public with quality and efficient services.

Thank you, President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Health Conditions of Professional Drivers

1. **MR SIN CHUNG-KAI** (in Cantonese): *President, recently, the issue of indisposition of professional drivers causing traffic accidents has aroused public concern. In this connection, will the Government inform this Council:*

- (a) *whether it knows the requirements set by operators of various modes of public transport (including franchised and non-franchised buses, ferries, trains, the Peak Tram and trams) concerning the health conditions of their drivers upon appointment and while in service, including the arrangements for drivers to undergo regular medical examinations, the examination items they are required to pass, as well as the circumstances under which they are required to report on their health conditions;*
- (b) *of the trend in the numbers of applications for new issuance and renewal of driving licences for various classes of commercial vehicles, and the number of applications rejected as well as the reasons for the rejection; the number of traffic accidents caused by indisposition of drivers of commercial vehicles, and the resultant casualties, in the past three years; and*
- (c) *given the stipulation in the Road Traffic (Driving Licences) Regulations that an applicant aged 70 or above applying for issuance or renewal of a driving licence is required to produce a certificate issued by a registered medical practitioner certifying that he is medically fit to drive motor vehicles of the class for which he is applying, whether the Government will study lowering the age threshold for such requirement in respect of driving licences for commercial vehicles, as well as increasing the items in the medical examination that an applicant is required to pass?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Government has all along been concerned about the physical health of professional drivers, including drivers of public transport modes, and understands the importance of motorists' health to ensuring safety of road users. All motorists, including professional drivers, have the responsibilities to ensure

that they would drive only when they are physically fit to do so and to ascertain their health conditions through health checks based on actual need.

The basic requirements regarding the health conditions of all motorists are set out in the existing legislation in Hong Kong. Under the Road Traffic (Driving Licences) Regulations (the Regulations), an applicant for a driving licence shall, on new application or reissue or renewal, make a declaration in the application form if he is suffering from any disease or physical disability specified in the First Schedule to the Regulations, such as epilepsy, mental disorder and liability to sudden attacks of disabling giddiness due to hypertension or any other cause, which would cause his driving to be a source of danger to the public. The relevant diseases and physical disabilities are listed in Annex I. If, from the declaration so made, it appears to the Commissioner for Transport (the Commissioner) that the applicant is suffering from the specified disease or physical disability, the Commissioner shall refuse the application.

It is also stipulated in the Regulations that an applicant aged 70 years or above shall, on new application or renewal of a driving licence, produce a medical examination certificate issued by a registered medical practitioner who is acceptable to the Commissioner not earlier than four months before the application to prove that the applicant is medically fit to drive. The applicant may choose to apply for a driving licence valid for one or three years as stated in the Regulations, which is different from the usual driving licences that are valid for 10 years.

The Transport Department (TD) also reminds public transport operators and drivers' groups to pay attention to the physical health of drivers and to attend regular check-ups. Drivers should stop driving if feeling unwell while on duty.

My replies to the three parts of Mr SIN's question are as follows:

- (a) The Administration attaches great importance to road and navigation safety of the public transport modes. Through legislation and regulation, public education and regular meetings with the trades, operators are reminded that all professional drivers should pay attention to their physical health. The operators should make suitable arrangements on health checks and health declaration.

Regarding road-based public transport modes including franchised buses, non-franchised buses and trams, all drivers must be holders of driving licences. They must therefore meet the statutory requirements under the Regulations regarding physical health of driving licence holders that apply to non-professional drivers as well on new application, reissue or renewal of driving licence. For franchised buses, all franchised bus companies have since 2007 required bus captains aged 50 years or above to undergo annual health checks as requested by the TD. Items covered include chest examination, eyesight, hearing, diabetes, blood pressure, blood and urine tests. For bus captains aged 60 or above, an electrocardiogram is also required.

Public transport operators have also laid down certain requirements on physical condition, relevant health declaration and health checks for their drivers/coxswains. Generally speaking, they request drivers/coxswains to make declaration and seek medical consultation if feeling unwell. Some of them also require drivers/coxswains to declare their health condition before they join the service and to have health checks regularly. Given their different operational modes, the arrangements in place are not identical. Relevant details concerning the public transport modes mentioned in part (a) of the question are at Annex II.

- (b) There is no definition of commercial vehicles in the existing legislation. According to the TD's usual practice, as far as driving licences are concerned, taxis, medium and heavy goods vehicles, private and public light buses, private and public buses, franchised buses, articulated vehicles and special purpose vehicles are generally regarded as commercial vehicles. At present, there are about 360 000 persons holding driving licences of commercial vehicles. From 2009 to 2011, the number of newly issued driving licences of commercial vehicles are 20 883, 18 614 and 19 539 whereas the number of renewed licences issued are 93 110, 41 231 and 10 009 respectively. The driving licences of commercial vehicles are normally valid for 10 years.

Between 2009 and 2011, in respect of the driving licences of commercial vehicles as mentioned above, the TD has refused four

applications for new issuance or renewal in 2009, two in 2010, and none in 2011. Except one application in 2010 which was rejected on the ground of not fulfilling the requirement, all the cases mentioned were rejected because the applicants were not medically fit for driving upon their self-declaration.

Moreover, from 2009 to 2011, according to the statistical analysis conducted by the TD based on the information on accidents from the police, the number of traffic accidents due to sudden sickness of drivers of commercial vehicles during driving with casualties are as follows: four accidents in 2009 with six persons injured, of whom three were severely injured and three suffered minor injuries; five accidents in 2010 with seven persons injured, of whom two were severely injured and five suffered minor injuries; six accidents in 2011 with three fatalities and four injured, of whom two were severely injured and two suffered minor injuries.

- (c) The Government reviews the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation (including requirements on medical examinations) from time to time to ensure that the legislation is able to protect the safety of road users effectively. Last year, having consulted the Road Safety Research Committee, the TD has revised the form of the Medical Examination Report (the report) to express more clearly the requirements for registered medical practitioners to, before signing the declaration, confirm that the conclusion stated in the report was made after having carried out health check of applicants of driving licences and taken into account all areas that needed to be examined. The new form has been in use since June 2011.

Concerning the suggestions of lowering the age requirement for submitting the reports by applicants of driving licences of commercial vehicles and increasing the items for medical examination that an applicant is required to pass, we consider that the implications of the suggestions on the community and operation of the trade should be fully examined. At present, there are about 360 000 persons holding valid driving licences of commercial vehicles, which is far more than the number of respective

commercial vehicles (about 80 000 currently). Any amendment to the relevant legislation would affect many driving licence holders of commercial vehicles who are not professional drivers. Therefore, we would first carry out extensive consultation, including with the trade and drivers' groups, make reference to the practices and experience of overseas jurisdictions, and balance the pros and cons before we come to any conclusion.

Annex I

Diseases or Physical Disabilities Specified in First Schedule to Road Traffic (Driving Licences) Regulations (Cap. 374B)

1. Epilepsy.
2. Liability to sudden attacks of disabling giddiness or fainting due to hypertension or any other cause.
3. Mental disorder for which the applicant for the licence, or, as the case may be, the holder of the licence is liable to be detained under the Mental Health Ordinance (Cap. 136) or is receiving treatment as an in-patient in a mental hospital within the meaning of that Ordinance.
4. Any condition causing muscular inco-ordination.
5. Uncontrolled diabetes mellitus.
6. Inability to read at a distance of 23 metres in good daylight (with the aid of spectacles or other corrective lenses, if worn) a registration mark.
7. Any other disease or disability which is likely to render him incapable of effectively driving and controlling a motor vehicle or suitably adapted motor vehicle to which such licence refers without endangering public safety, provided that deafness shall not of itself be deemed to be any such disability.

Annex II

Requirements on drivers' physical health and
health check arrangements by public transport operators

Regarding road-based public transport modes including franchised buses, non-franchised buses and trams, all drivers must be holders of driving licences and must therefore meet the statutory requirements regarding physical health of the licence holders on new application, reissue or renewal of a driving licence under the Road Traffic (Driving Licences) Regulations (Cap. 374B) (the Regulations).

Franchised buses

All bus captains are required to declare their health conditions and pass a health check before joining the service. Since 2007, all franchised bus companies have required, as requested by the TD, bus captains aged 50 years or above to undergo health checks every year, with items including chest examination, eyesight, hearing, diabetes, blood pressure, blood and urine tests. For bus captains aged 60 or above, an electrocardiogram is also required. In addition, the franchised bus companies also require their bus captains to declare any disease or physical disability specified in the First Schedule to the Regulations to ensure that the captains are medically fit to drive buses. Guidelines have also been issued to remind their bus captains not to continue driving if feeling unwell while on duty and to seek medical consultation promptly.

Non-franchised buses

We understand that some operators require newly recruited drivers to provide health check certificates. Although the operators generally do not require their drivers to undergo health checks annually, drivers found to be unwell or in abnormal mental condition when coming to work will not be assigned driving duties and they will be asked to see a doctor for treatment or medical examination.

Trams

All newly recruited drivers are required to declare their medical history and pass a health check. All drivers are required to undergo an eyesight test annually;

drivers aged between 55 and 59 are required to undergo eyesight and blood pressure tests annually; and drivers aged 60 or above are required to undergo a general check-up annually.

Peak trams

All newly recruited peak tram operators are required to pass a health check. Regardless of age, all serving operators are required to undergo a health check annually with items including an electrocardiogram as well as tests on pulmonary and liver functions. Operators not feeling well are required to report to the management for appropriate arrangements by the company.

MTR

Train captains are required to pass a health check before joining the MTR Corporation Limited (the MTRCL). The MTRCL requires all MTR train/bus captains to undergo health check annually with items including chest examination, eyesight, diabetes and blood pressure tests. An electrocardiogram is also required for train/bus captains aged 45 and above. The MTRCL has issued clear guidelines that due to safety considerations, both the staff members and their supervisors are responsible for ensuring that the former are physically fit to perform duties. The MTRCL encourages voluntary declaration of physical health by the staff members to facilitate appropriate work arrangements. If the MTRCL is in doubt about the health conditions of any employees, health checks will be arranged accordingly.

Ferries

Major ferry operators require their crew members to pass a health check performed by medical practitioners specified by the companies before employment. Although the operators generally do not require their crew members to undergo medical examination annually, they encourage voluntary reporting of health conditions by the crew members who feel unwell in order to make appropriate work arrangement.

MR SIN CHUNG-KAI (in Cantonese): *President, in part (b) of the main reply, the Secretary pointed out that the numbers of traffic accidents due to sudden*

sickness of drivers during driving with casualties are as follows: four accidents in 2009; five accidents in 2010; and six accidents in 2011. It seems that the number of casualties resulting from such accidents has been on the rise. Although the number is not great, the scope of impact so caused has been alarming. I concur with the Secretary that if all 360 000 driving licence holders are required to undergo health checks, the impact may be very extensive. However, will the authorities, based on risk assessment, ask the relevant public transport operators to require their drivers to undergo more stringent health checks? For instance, as mentioned in the main reply, only those bus captains aged 60 or above are required to take an electrocardiogram examination. However, there are views that the age threshold should be lowered.

May I ask the Secretary whether he will discuss with public transport operators, including franchised buses and trams; and whether he will ask public transport operators to review their requirement on professional drivers, requiring them to undergo more stringent health checks?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Government is keenly concerned about this kind of traffic accidents, in particular, those involving drivers of commercial vehicles. It will also make reference to the statistics and analyses on the number of traffic accidents done by the police, so as to see if it is showing such a trend. As the daily vehicle flow is so heavy, the number of this kind of traffic accidents may not be on the high side at present. Nonetheless, we hope that the occurrence of traffic accidents can be reduced by all means.

Mr SIN asked earlier whether it is necessary to further intensify the effort of requiring public transport operators to conduct more stringent health checks. After the recent traffic accident that happened in Chai Wan, the Panel on Transport of the Legislative Council held a special meeting, during which I received views from a number of Members as well as various public transport operators and organizations. We agreed to conducting a review of the requirement of undergoing health checks currently imposed by franchised bus operators on their drivers, so as to see if, first of all, there is any room for improvement in respect of the age threshold; and secondly, whether a clearer requirement can be drawn up regarding the examination items that drivers should take.

DR LEUNG KA-LAU (in Cantonese): *President, no matter how accurate health checks are, there are bound to be restrictions. Traffic accidents may occur even there is a very slim chance, say one ten thousandth or one hundred thousandth only, of errors occurring in such checks. Apart from health checks, some equipment is in fact available for detecting if drivers have lost consciousness or even dozed off. May I ask the Secretary whether the Government will consider introducing such equipment for heavy-duty vehicles, so that an audible warning device, followed by an auto-brake system, can be triggered once such situation is detected?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, as I said earlier, in response to the traffic accident in Chai Wan, we plan to conduct a review and consult the medical sector. As to the question of whether we can use the equipment mentioned by Dr LEUNG just now, we will of course hold an open attitude. But ultimately, should such a method be adopted, we have to consider the manner of implementation. Earlier on, I also mentioned in my main reply that quite a number of persons (about 360 000) were holders of driving licences for commercial vehicles, who were neither professional drivers nor employees of large corporations. As such, we should examine in detail how it can be implemented.

DR LEUNG KA-LAU (in Cantonese): *Such equipment is installed inside vehicles rather than on drivers' bodies.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I know, but there will be some cost implications.

MR KWOK WAI-KEUNG (in Cantonese): *President, I believe that every Member here may have contracted some hidden diseases due to their work. Undergoing more stringent health checks can raise the accuracy of testing, though it does not mean that hidden diseases can be totally prevented. There are views in the community that such accidents are attributed to drivers' physical health. However, I wish to point out here that with such a low basic salary and long working hours for bus drivers, it is difficult to attract young people to join*

the trade. Due to road congestions, drivers very often have no time to take a break. There may even be not enough time for them to take meals and go to the toilet. The arrangement to push them to catch up with the previous shift or work double shifts is also inhumane. Given that professional drivers are not covered by the existing Occupational Safety and Health Ordinance, may I ask the Secretary here whether the Bureau will consider extending the coverage of the Ordinance to professional drivers?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the views put forth by Mr KWOK just now had in fact been raised at the special meeting of the Panel on Transport last week. At that time, colleagues representing the Labour and Welfare Bureau also mentioned that the relevant legislation currently does not cover these professional drivers. But the Government would further examine their views. No matter they are professional drivers or not, their physical health is equally important, for it will affect not only themselves, but also passengers and other people on roads. Therefore, such requirements are also stipulated in the Road Traffic Ordinance.

MR CHRISTOPHER CHUNG (in Cantonese): *President, bus service is a franchised service. The Government has also appointed representatives as Board members of bus companies to monitor their operation. Such unreasonable remuneration system offered by bus companies has exerted great pressure on bus captains, thus affecting their driving safety. Bus captains receive a basic monthly salary of about \$8,000 to \$9,000 only, with bonus and overtime allowance accounting for 70%, 80% or even more than 100% of their pay. May I ask the Secretary whether the Government has squarely addressed such a serious problem? Is there any way to improve such a system of deprivation by bus companies, so as to ensure the safety of members of the public?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, this is a matter relating to the market-rate remuneration of various trades, which scope is wider than that of the main question under discussion today.

(Mr Christopher CHUNG stood up)

PRESIDENT (in Cantonese): Mr CHUNG, please let the Secretary give a reply first. If you think that he has not answered your supplementary question, you can raise a follow-up question. Secretary, please.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): I understand the rationale behind Mr CHUNG's supplementary question, that is, whether drivers' low remuneration or long working hours has affected their health conditions while driving. No matter what, it is our policy that we hope drivers of various classes of vehicles can pay attention to their physical health, as this may cause impact on road safety as a whole.

As for the question of whether the working hours of captains of franchised buses are too long and whether they have sufficient time for rest, the Government undertook, at the special meeting of the Panel on Transport held last week as I mentioned just now, to conduct a further review and examine with franchised bus companies, so as to see if there would be any room to improve the existing arrangement on working hours, rest breaks and meal breaks.

MR CHRISTOPHER CHUNG (in Cantonese): *What I mentioned just now is that the Government has appointed representatives as Board members of bus companies. What have they done so far? Have they just been dreaming? As for the remuneration structure of bus companies, they*

PRESIDENT (in Cantonese): Mr CHUNG, please stop making comments.

MR CHRISTOPHER CHUNG (in Cantonese): *My question is*

PRESIDENT (in Cantonese): Please repeat the part that you think the Secretary has not answered.

MR CHRISTOPHER CHUNG (in Cantonese): *What I have to say is that the pressure faced by bus drivers comes not solely from long working hours. President, such pressure has affected both their driving safety and the safety of passers-by.*

PRESIDENT (in Cantonese): The question raised by Mr CHUNG is related to the main question, as the latter involves the impact of professional drivers' physical health on traffic safety. And as pointed out by Mr CHUNG, the remuneration system of bus drivers would pose threats to their health. Secretary, please.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, as far as public transport operators are concerned, staff wage is certainly one of their cost components. In considering applications for fare adjustment submitted by these operators, we will take it as an opportunity to fully examine their operation. As mentioned by Mr CHUNG just now, drivers' financial situation may affect their mood while driving or exert pressure on them. Generally speaking, this should be one of the factors. However, in my opinion, the occurrence of traffic accidents can be attributed to a number of factors.

MR TANG KA-PIU (in Cantonese): *I will stick to the thrust of the main question and raise a supplementary question on the health and safety of professional drivers. As pointed out by Mr KWOK Wai-keung just now, the existing Occupational Safety and Health Ordinance does not cover professional drivers. Employers are not required to shoulder any legal liabilities in law. This fully explains why employers will not consider the impact of working environment, arrangement and equipment on drivers, thus making them suffer from chronic illnesses. As shown in the main reply, it seems that the Government and even the community are very much concerned about the health and safety of professional drivers, but the Government does not keep such figures. We have made enquiries with the Labour Department, Social Welfare Department and TD. However, they all failed to provide us with any yearly figures on injuries at work and occupational diseases relating to professional drivers. Regarding self-employed drivers, there is no protection for them at all. As a result, there are three "no's": no figures, no legislation*

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

MR TANG KA-PIU (in Cantonese): *May I ask the Secretary how he can give a reply in the absence of statistical figures? And what is the timetable for making legislation and legislative amendments?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the existing Occupational Safety and Health Ordinance indeed does not cover those professional drivers mentioned by Mr TANG just now. It is because the Road Traffic Ordinance has already covered drivers of various classes of vehicles, requiring them to pay attention to road safety while driving. However, the views put forth by Mr TANG had also been raised at the special meeting of the Panel on Transport held last week. The Government noted that Members were concerned about these issues and the Labour Department also undertook to further look into them.

MR POON SIU-PING (in Cantonese): *As mentioned by the Secretary just now, there were about 15 traffic accidents due to sudden incidence of medical condition of drivers of commercial vehicles while driving in the last three years. Of course, it is very important to ensure both drivers' safety and road safety. I also know that there are guidelines requiring bus companies or public corporations to arrange for health checks for their drivers. May I ask the Secretary if there is any information showing, among these 15 traffic accidents, the number of accidents which are related to drivers of public corporations? As for the remaining accidents, what parties are involved?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, causalities were of course involved in these 15 traffic accidents. In 2010, there was one accident involving franchised buses, two involving light buses, one involving a taxi and one involving a truck. In 2011, there were two accidents involving franchised buses; one involving a truck; and three involving taxis. In 2012 (as at October), there are one accident involving a franchised bus and two involving taxis.

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

Promoting Respect for Elderly and Fostering a Sense of Worthiness Among Them

2. **MR LEUNG CHE-CHEUNG** (in Cantonese): *President, quite a number of the retired elderly people have relayed to me that they cannot benefit from most of the current welfare measures for the elderly as they have not reached the age of 65. Since they no longer have any income, their life after retirement is harder than before. Some of them wish to rejoin the workforce so as to improve their livelihood and lead a more gratifying life, but the Government provides no support for re-employment of the elderly. On the other hand, the Labour and Welfare Bureau and the Elderly Commission (EC) have, since 2007, implemented the Elder Academy (EA) Scheme to encourage lifelong learning and continued contribution to society among the elderly. Regarding the measures for promoting respect for the elderly and fostering a sense of worthiness among them, will the Government inform this Council:*

- (a) *given the different minimum age requirements for the target beneficiaries of various current elderly welfare measures (for example, the age eligibility requirements for the concessionary rate of the admission fee for public swimming pools, the \$2 transport fare concession scheme as well as the vaccination subsidy scheme for the elderly, and the elderly healthcare vouchers are 60, 65 and 70 respectively), of the factors taken into consideration by the Government in setting the minimum age requirements for the target beneficiaries of various elderly welfare measures; whether it will review the age requirements for those measures and standardize them at the age of 60; if it will, of the details; if not, the reasons for that;*
- (b) *whether it will formulate a policy for assisting the re-employment of the retired elderly aged 60 to 64, such as providing subsidies or tax concessions to private enterprises and public organizations employing the elderly; and*

- (c) *of the number of elderly people who participated in the EA in the past five years, and whether the number had reached the original target set by the authorities; of the measures taken by the Government to encourage lifelong learning and participation in volunteer work among the elderly?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, my reply to the question raised by Mr LEUNG Che-cheung is as follows:

- (a) The Government's overall objective is to provide appropriate assistance and concessions to meet the needs of our citizens, and ensure the proper use of public resources. Since the nature, aim and target recipients may vary across various assistance and concession schemes, different age requirements and eligibility criteria may apply. Such arrangement is also applicable to the formulation of the various welfare schemes for the elderly. We have no plan to standardize the age requirements under the various schemes.
- (b) On employment support, the Labour Department (LD) has all along been providing a comprehensive range of employment services free of charge to help job seekers find work. Special counters have been set up in all job centres of the LD to provide priority registration and referral service for job seekers aged 50 or above. At the same time, the LD implements the Employment Programme for the Middle-aged to encourage employers to employ job seekers aged 40 or above. Participating employers will be paid a training allowance at \$2,000 per month for a period of three to six months if they employ these job seekers and provide them with on-the-job training.

Meanwhile, according to the Inland Revenue Ordinance (Cap. 112), all outgoings and expenses including expenditure incurred on the employment of labour, to the extent to which they have been incurred by the taxpayer in the production of chargeable profits, are all allowed as deductions in calculating the taxpayer's assessable profits.

- (c) To promote lifelong learning among the elderly, the Labour and Welfare Bureau and the EC have been jointly implementing the EA Scheme since 2007. In the 2012-2013 school year, there are altogether 110 EAs in primary and secondary schools and tertiary institutions throughout the territory. In the past five years, the EAs had provided about 54 000 learning places for elders in total. In 2009, the Government allocated \$10 million to set up the Elder Academy Development Foundation for the sustainable development of the EA Scheme. Apart from subsidizing the establishment of EAs, the Foundation had also allocated funds in the past three years to support the promotion, curriculum development and extra-curricular activities of the EA Scheme. Work in this regard will continue.

Apart from the EA Scheme, the Labour and Welfare Bureau has been collaborating with the EC to promote active ageing at the community level. Since its inception in 2008, the Neighbourhood Active Ageing Project (NAAP) has been encouraging people of different ages to serve as volunteers to care for elders. In addition to reaching out to hidden elders and promoting the message of care and love for the elderly, the NAAP provides an opportunity for elders to act as volunteers and use their talents to serve the community. A new phase of the NAAP was launched in April this year, and 69 district projects are being carried out in different parts of the territory. The new phase aims at fostering harmonious family relations and enhancing neighbourhood support networks, which ties in with the "Love And Respect Thy Elders" Campaign of the Family Council.

As at the end of October 2012, more than 136 000 persons aged 60 or above had registered as volunteers with the Social Welfare Department, accounting for 12.7% of the total number of volunteers so registered. The Labour and Welfare Bureau and the EC will continue to promote a sense of worthiness amongst our elders and encourage them to actively take part in community affairs.

MR LEUNG CHE-CHEUNG (in Cantonese): *President, at present, the retirement age for the great majority of people in society starts at 60 years but people in this age group actually still want very much to make contribution to society after retirement with the knowledge or social experience acquired by them. However, often, the Government does not provide any support in this regard, including some kind of encouragement or support in terms of information.*

In view of this, I wish to ask a supplementary question to see if the Secretary can consider it. Just now, the Secretary said that support would be provided to needy people in various age groups but I think the targets of support cannot cover all elderly retirees. May I ask the Secretary if he has assessed how great the impact on the coffers will be if the Government standardizes the age at which all target recipients are eligible for support at 60 years?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Mr LEUNG for expressing concern over the support provided to elderly people aged 60 or above. In fact, with a rapidly ageing population in Hong Kong, we must face this issue squarely. Therefore, Members can see that after this Government has taken office, it has launched work relating to the old age living allowance. This is an important message showing that we care about elderly people.

As regards drawing the line at 60 years, as mentioned by the Honourable Member just now, on making it compulsory to provide support to all elderly people aged 60 or above, we have not made any assessment of the situation suggested by the Member just now to see by how much the expenditure would increase, but the amount would certainly increase.

However, I wish to stress one point. At present, we provide support in various areas and various types of support and concessions are available. One of the greatest concerns to Members is that people aged 60 or above want to continue to work — indeed, being 60 years old is quite young — and it is said in the Member's main question that we "provide no support" but there may be a little bit of misunderstanding here. In fact, as I pointed out in the main reply, the LD has a programme that focuses on helping job seekers who are older. So long as job seekers are older than 50 years, they will be put in a priority queue and there

is no need to wait. Priority will be given to them in registration and referrals can be made for them.

In addition, we also have an Employment Programme for the Middle-aged but in fact, this programme does not have any upper age limit. So long as one is aged 40 or above, one can apply. Even if one is 60 or 65 years old, so long as one is able-bodied and can still work, this is not a problem either. Through this programme, we have made referrals for many jobs, such as security guards and warehouse assistants, and as a small incentive, a subsidy at \$2,000 per month for a maximum period of six months is also offered to any employer participating in the Employment Programme for the Middle-aged.

Through the examples given just now, I wish to show that we are making efforts and have not drawn a line at 60 years. So long as one has reached 50 years of age, one can wait in the priority queue, so it can be seen that a flexible approach is adopted. We are aware of Members' concern and also understand that more efforts need to be made in this regard. Therefore, we will keep the programme under review, for example, to see if it can be streamlined or if the threshold can be lowered a little bit in the future after it has operated for some time. We will explore these issues continually and we attach importance to the views put forward by Members.

DR CHIANG LAI-WAN (in Cantonese): *President, I wish to follow up part (b) of the main question asked by Mr LEUNG Che-cheung. I know that elderly people come from various classes and many of them are even professionals. If private companies want to hire retirees or people above a certain age, may I ask the Secretary if the Government will offer any tax concessions in this regard; if not, will it consider encouraging these companies to hire elderly retirees in the future?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Dr CHIANG for the supplementary question. In my main reply, I have already explained that according to the Inland Revenue Ordinance, at present, all outgoings and expenses, including expenditure incurred on the employment of labour — no matter what the ages of the employees are, rather than excluding employees who are under 60 years old and including those who are over 60 years

old — so long as it is expenditure incurred on the employment of labour, it can be included for the purpose of deduction. This is the first point.

The second point is on whether or not further efforts can be made. I have looked into this matter. According to the information provided by the Inland Revenue Department, at present, 90% of all companies do not pay taxes and the remaining 90 000 companies have to pay profits tax. Therefore, on the question of whether or not the introduction of a taxation measure would be effective, I believe the impact would probably not be great. However, most importantly, under the existing Inland Revenue Ordinance, it is already possible to deduct such expenses. In other words, this arrangement is no novelty.

PRESIDENT (in Cantonese): Dr CHIANG, what is your point?

DR CHIANG LAI-WAN (in Cantonese): *Can I ask another question?*

PRESIDENT (in Cantonese): If you wish to ask another question, please wait for another turn.

DR CHIANG LAI-WAN (in Cantonese): *Fine. Thank you.*

MR CHAN CHI-CHUEN (in Cantonese): *President, I think perhaps the Secretary knows what the essence of this main question is, that is, there are really many retirees aged between 60 and 64 who think that the Government does not provide any assistance whatsoever to them.*

Part (a) of the Secretary's main reply consists of only six lines and I think Members would all find that he lacks sincerity. My supplementary question is: Given that the lower age limit eligible for some types of support are 60, 65 and 70 years respectively, will the Bureau conduct regular reviews to see which age limits can be lowered as far as possible? For example, if the age requirement is 65 years, it can be lowered to 60 years, so that elderly people aged between 60 and 64 would not have the impression that they are ditched after being exploited

and that they are not cared for upon retirement, thus obliging them to lead difficult lives during these four or five years?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Mr CHAN Chi-chuen for the supplementary question. I said from the outset just now that we would review this line from time to time. In fact, there are objectives and principles for each programme, each concession and each facility when it is put in place and the nature of each is also different. This is the case with every measure, so an across-the-board lower age limit cannot be prescribed.

Having said that, I said just now that we would conduct reviews from time to time. Take the \$2 concessionary fare mentioned by me as an example, this concession was introduced not long ago and I have undertaken to carry out a comprehensive review three years later, that is, at present, only those aged 65 or above are eligible for the concessionary fare but in the future, we would not rule out the possibility of lowering this line in response to requests in the future. However, a review can be conducted only after the measure has been implemented and in operation for some time. Therefore, we would not say categorically that this line would not be lowered. We will conduct a review of each programme and we will make an effort for it.

DR HELENA WONG (in Cantonese): *The emphasis of this main question is on showing concern for the welfare of elderly retirees aged between 60 and 65 and ways of helping them. However, I think there is an even more important issue which is related to it, an issue that I wish to ask in my supplementary question. Has the Government ever considered reviewing the retirement age for employees of government and public organizations and whether or not appropriate conditions exist for pushing back the retirement age from 60 to 65 years? If the retirement age for employees can be postponed to 65 years, our concerns nowadays would no longer pose any problem to us. We do not have to consider how to assist them, what concessions and subsidies to give them or lowering this line of eligible age to 60 years, and so on. Now, many countries have pushed back the retirement age one after another and now, the average life expectancy of Hong Kong people has already overtaken that of the country universally acknowledged to have the longest life expectancy — Japan*

PRESIDENT (in Cantonese): Dr WONG, you have already asked your supplementary question.

DR HELENA WONG (in Cantonese): *my supplementary question is: The time from retirement to death is very long, so can consideration be given anew to*
.....

PRESIDENT (in Cantonese): You have already asked your supplementary question. Please sit down and let the Secretary answer it.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the supplementary question asked by Dr WONG has to do with retirement age and this has deviated somewhat from the subject of the main question today.

PRESIDENT (in Cantonese): I allowed Dr WONG to ask this supplementary question because as pointed out by her, the main question is concerned with, among others, people aged between 60 and 64 and she believes that if the retirement age can be pushed back to 65 years, the problems can be solved, so this is relevant to the main question. Secretary, please reply.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Fine, President. Of course, what Dr WONG said is right. If this gap between 60 and 64 years of age can be filled, it is true that today, we do not need to discuss this issue. I agree with this point.

However, retirement age is an issue with extensive and far-reaching implications, so time for discussion is required. In fact, all of us are concerned about a series of problems brought about by an ageing society. Of course, we dare not undertake that measures will be taken in respect of the retirement age. At present, there is no legislation requiring employees to retire at a certain age and the practice of public organizations is to follow an unwritten convention and there is no legislative requirement. The employees of some private companies retire only at 65 years of age. Therefore, I agree that this Government needs to begin to address the issue of retirement age.

MISS ALICE MAK (in Cantonese): *President, although the Secretary's main reply mentioned an employment programme for middle-aged people, the focus of this question is actually on the employment problems facing people aged between 60 and 64, that is, people who are about to be compelled to go into retirement. So what we are discussing now is not just their welfare but also their needs in employment.*

Can the Secretary comment on whether or not the Bureau provides any employment support to this group of people aged between 60 and 64 who are compelled to go into retirement? Apart from giving priority to people who have reached 50 years of age, as mentioned just now, and the Employment Programme for the Middle-aged designed for people aged 40 years or above, for people aged between 60 and 64, does the Bureau have any targeted measure? If the reply is in the negative, will it consider proposing any?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): *President, thanks to Miss MAK for the supplementary question. The LD does not have any special measure targeting this age group of 60 to 64. Our measures are designed solely to address the needs of people aged 50 years or above. The eligible age for the Employment Programme for the Middle-aged is over 40 years. Last year, among people who succeeded in finding employment through this programme of the LD, 337 people were elderly people aged 60 or above. These 337 people really found their jobs with the referral of the LD and there were also some people who did not need the LD's referral but found jobs on their own after accessing our information. We have no way of knowing how many people there are in this group but the total number is surely not just limited to some 300 people. However, it is true that these 300 or so people found their jobs with the referral of the LD. This is the first point.*

Second, some training programmes of the Employees Retraining Board do not have any age limit, for example, domestic helpers and post-natal carers, and at present, post-natal carers are in great demand. In fact, women at 60 years of age are still very young and after receiving training as post-natal carers, they can take up employment again at any time.

Therefore, we have complementary measures to help needy people in many aspects. With regard to people who have greater difficulty finding employment,

apart from the Employment Programme for the Middle-aged mentioned by me just now, there is also a Work Trial Scheme for people in difficulty, that is, people who are older and have greater difficulty finding work. In their one-month work trial, they will be granted an allowance of \$6,000 by us, with \$500 of it being met by the participating organization. In this way, they can get an opportunity of work trial. If employers find them acceptable, they can hire them. We have assisted many job seekers who are more advanced in age through this method and we encourage employers to open this door as far as possible. We will step up our efforts and monitor the actual situation continuously.

I have also looked at the present unemployment figures. If Members have paid any attention to them, they will find that at present, the latest unemployment rate for people aged 65 or above who want to seek employment is 1.2%. According to the latest figures, the present overall unemployment rate in Hong Kong is 3.4% and that for the group aged 60 or above wishing to look for work but could not find any stands at 1.2%, that is, there are about 2 800 elderly people looking for employment. This is the latest figure.

DR FERNANDO CHEUNG (in Cantonese): *President, our present retirement age is most incongruous with the welfare or protection provided to elderly people. The Secretary also admitted in his reply just now that currently, there is no legal requirement on the retirement age of employees in Hong Kong. May I ask the Secretary when he plans to enact legislation against discrimination on the basis of age and scrap this system of compulsory retirement at 60 years of age?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Dr CHEUNG for the supplementary question. The first part of his question is about whether it is necessary to enact legislation against discrimination on the basis of age. In fact, this issue was discussed in the previous two Legislative Councils. The Administration also conducted a public opinion survey and gave an account to the then Panel on Manpower, stating that such approaches as education and publicity were far superior to enacting compulsory legislation, particularly from the perspective of employment because employers have many ways of circumventing requirements. On the prevention of discrimination on the basis of age, if employers want to recruit people for some posts through the LD, age

cannot be one of the requirements and we have spelt this out very clearly. Therefore, if an employer states that only people below the age of 60 would be hired, we cannot post his recruitment notice. Therefore, it is not necessary, nor is it allowed, to state any age requirement when one approaches the LD for hire of workers. This point is very important and in fact, this culture is also being promoted in society. This is the first point.

Second, the Honourable Member asked me if legislation would be enacted to prescribe a retirement age. There is some difficulty in this because in the final analysis, the labour market needs flexibility in operation and the Government also does not have any policy to compel employees to retire at 60 years of age. Take the Government as an example, if some colleagues really have the actual need or other grounds, their retirement age can be pushed back by two years and such instances are very common. Of course, the approval of the departmental head concerned must be obtained. The same applies to the business sector and there is no requirement stating that employees must retire at 60 years of age. In fact, we all know that many elementary workers are still very strong and working despite having reached 60 years of age.

I understand that an elderly population would bring various policy needs, so we need to address them and continue to liaise with all parties, so as to map out an overall direction for the population policy. This is a job that needs to be undertaken with the aid of collective wisdom.

MR YIU SI-WING (in Cantonese): *President, may I ask the Secretary if he would consider issuing guidelines to large or public organizations to guide or encourage them to take part in offering concessions to the elderly?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, thanks to Mr YIU for the supplementary question. On concessions for the elderly, we all know that at present, elderly people who have reached 65 years of age can get a Senior Citizen Card and they are entitled to some discounts, for example, a 20% discount. This arrangement has been in place for a long time and now, 1.3 million elderly people have obtained this card and companies are joining in all the time to offer concessions. The response from companies has been excellent, so elderly people are entitled to some concessions, for example, paying less when shopping, paying \$10 for movie tickets during non-peak hours,

and so on. In fact, many concessions are being offered, but I also agree that we have to continue to make efforts in promotion. We have all along been making efforts and the Social Welfare Department is responsible for promotion. We will further step up the dissemination of the relevant messages having regard to the actual situation.

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

MR YIU SI-WING (in Cantonese): *The Secretary has not yet answered my supplementary question.*

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

MR YIU SI-WING (in Cantonese): *I asked him if guidelines can be issued to encourage the companies, but he did not reply if such guidelines would be issued.*

PRESIDENT (in Cantonese): Secretary, please give a reply on the guidelines and incentives.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, we are absolutely happy to make further efforts. I have also said just now that we would step up the efforts. In fact, in respect of publicity and promotion, we will take measures to tie in with companies in relation to the Senior Citizen Card and step up publicity and promotion in various areas. We would make such efforts.

PRESIDENT (in Cantonese): We have spent almost 23 minutes on this question. Third question.

Law Enforcement Actions Against Unlawful Acts of Taxi Drivers

3. **DR ELIZABETH QUAT** (in Cantonese): *President, it has been reported that incidents of taxi drivers overcharging taxi fares and robbing passengers of their luggage have happened in Hong Kong one after another recently. In this connection, will the Government inform this Council, in the past three years:*

- (a) *of the respective numbers in each year of complaints received by the Government about taxi drivers allegedly overcharging taxi fares, tampering with taximeters (commonly known as "meters"), using non-compliant meters, refusing hire or selecting passengers, not taking the most direct route to the destination, as well as carrying at the same time a number of passengers who did not know each other and charging them individually (commonly known as "taxi pooling"); the number of cases reported to the police involving taxi drivers robbing passengers of their luggage; and the percentage of tourists in the passengers involved in the aforesaid cases in each year;*
- (b) *of the respective numbers of cases of taxi drivers being prosecuted for the aforesaid offences and convicted, together with the respective highest penalties imposed by the Court in respect of offences of overcharging taxi fares, refusing hire, meter tampering and using non-compliant meters; and whether prosecutions have been instituted against taxi drivers for robbing passengers of their luggage; if prosecutions have been instituted, of the relevant charges and judgments; and*
- (c) *of the measures taken by the authorities to curb the aforesaid crimes committed by taxi drivers, so as to safeguard the reputation of Hong Kong's tourism industry; whether they will take more proactive measures in future to combat such crimes; if they will, of the specific details of such measures; if not, the reasons for that; whether the authorities will consider increasing penalties for offences such as overcharging taxi fares by taxi drivers, and so on; if not, of the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, taxis play a key role in Hong Kong's public transport service network. There are over 18 000 taxis in Hong Kong, with more than 57 000 taxi drivers. In the first 10 months of 2012, the average daily taxi patronage is about 0.9 million.

The Government strives to maintain quality taxi service and combat malpractices. We have a sound legal and regulatory regime: the Road Traffic Ordinance (the Ordinance) stipulates that overcharging, refusing hire, soliciting, failing to drive to destinations with the most direct practicable route and malpractices relating to the taximeters are illegal. The Ordinance also stipulates clear penalty with deterrent effect, with the maximum penalty for the above offences being a fine of \$10 000 and imprisonment for six months. The police take vigorous enforcement action to combat crime. The Transport Department (TD) mainly refers complaints to taxi owners, urging them to remind drivers who rent their taxis to improve service standard.

The Government also puts considerable effort in public education and publicity. The TD and the Hong Kong Tourism Board (HKTB) distribute information targeting different passenger groups on fares and telephone helplines via different channels.

The Government has grave concern over the recent cases of suspected overcharging by taxi drivers and theft of passengers' baggage stored in the taxi boot. The Government will take a serious stance against such malpractices and will not tolerate them. The police have already stepped up enforcement action to combat such illegal activities. The TD and the HKTB have also enhanced publicity and public education to remind passengers to be on guard.

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

(a) and (b)

Complaints received by the Transport Complaints Unit under the Transport Advisory Committee are about suspected cases of overcharging, refusing hire or selecting passengers, failure to drive to destination by the most direct practicable route, charging by the number of passengers rather than the taximeter (commonly known as "taxi pooling") and malpractices relating to the taximeter. A total of 7 735 complaints were received in 2010, 8 559 in 2011, and 7 318

in 2012 up to October. The majority of complaints are on refusing hire, failure to drive to destination by the most direct practicable route and overcharging. A detailed breakdown of the complaints is at Annex I. Cases involving complainants who claimed to be tourists account for about 14% of the total complaints per year.

Against these malpractices, the police have initiated 1 620 prosecutions in 2010. The figure is 1 557 in 2011 and 1 725 in 2012 up to October. A detailed breakdown of the cases is at Annex II.

According to the record of the police, the highest fine imposed by the Court from 2010 to October 2012 in respect of overcharging, refusing hire and taximeter-related offences was \$4,000. There was another case under which the driving licence of a taxi driver was suspended for eight months.

On theft of passengers' luggage or belongings by taxi drivers, the police have received a total of 19 reported cases in the first 10 months of 2012 (with two cases reported by Hong Kong residents and 17 by Mainland tourists or foreigners). The police arrested a total of five taxi drivers in suspected connection with the above cases. One of them was convicted in July and sentenced to five-month imprisonment. Another one was convicted in September and sentenced to 100 hours of community service. The police do not have the relevant figures for 2010 and 2011.

- (c) To redouble our effort in combating crimes involving taxis by unscrupulous persons, the relevant departments have stepped up their work in enforcement and publicity. They have also strengthened the liaison with the tourism and taxi trades.

On enforcement, the police have in various police districts, particularly the Yau Tsim, Central and Airport Districts frequented by tourists, implemented targeted measures. Key tasks are to strengthen patrols at black spots, launch intelligence-led operations and enhance publicity. The Regional Crime Unit of Kowloon West, in collaboration with Traffic Kowloon West and the Yau Tsim Police District, has also conducted decoy operations at various black spots against malpractices such as overcharging and

taximeter-related offences over the past few weeks. Seven persons have been arrested so far. The operations are still ongoing. The police have also set up dedicated telephone hotlines to facilitate reporting by the taxi trade and passengers respectively.

The police attach great importance to the theft of passengers' luggage and belongings, and have referred them to Regional Crime Unit of Kowloon West for consolidated follow-up investigation. There is currently no evidence to suggest that syndicate elements are involved in such cases. However, the vast majority of the tourist victims cannot provide the police with information such as the vehicle registration number of the taxi involved or the name of the driver, which makes the investigation all the more difficult. The police have strengthened specific enforcement actions, which include stepping up patrols at black spots and carrying out intelligence-led operations to combat such kind of crime.

On publicity and public education:

- (i) The TD has already set up electronic display panels, information boards and large banners at major taxi stands and tourist spots with higher pedestrian flow. Information on taxi fares as well as reference fares for journeying to major destinations is displayed;
- (ii) The TD has already printed additional leaflets with details on taxi fares, reference fares for journeying to and from major tourist locations as well as telephone helplines for distribution at the airport, border crossings and tourist spots. The TD will also work with the police, Yau Tsim Mong District Council and taxi trade to launch publicity activities targeting taxi malpractices along Canton Road in Tsim Sha Tsui; and
- (iii) The police and the HKTB disseminate "Advice to Visitors" via their websites. Visitors are reminded to pay attention to the taxi driver identity plate displayed inside the taxi compartment, and to request from the driver a print-out fare receipt with the taxi registration number for follow-up when necessary. The HKTB will also enhance publicity in Mainland cities from where the majority of tourists come.

According to the law, offences of suspected overcharging, refusing hire, soliciting and failing to drive to destination by the most direct practicable route, as well as those relating to taximeter are liable on conviction, as stated just now, to a maximum penalty of a fine of \$10,000 and imprisonment for six months. The penalty has already carried deterrent effect. The relevant departments will step up enforcement and publicity efforts against the recent taxi offences for precautionary purpose. In addition, subject to the details of individual cases and the evidence obtained, the police may consider charging suspected drivers with criminal offences which are liable to a heavier penalty, such as "Theft" and "Attempt Deception". These offences, on conviction, are liable to a maximum penalty of imprisonment for 10 years.

Annex I

Complaints received by the Transport Complaints Unit
on suspected malpractices of taxi drivers

<i>Types of complaints</i>	<i>2010</i>	<i>2011</i>	<i>2012 (January - October)</i>
1. Overcharging	1 000	1 255	1 294
2. Taximeter-related offences	441	389	310
3. Refusing hire	1 610	2 111	1 655
4. Failing to drive to destination by the most direct practicable route	1 428	1 511	1 306
5. Soliciting *	11	34	20
6. Others #	3 245	3 259	2 733
Total:	7 735	8 559	7 318

Notes:

* Including complaints on "taxi pooling".

Including behaving other than a civil and orderly manner, failing to drive to destination, and offences relating to the taxi driver identity plate, and so on.

Prosecutions initiated by the Police
against taxi offences under traffic regulations

	2010	2011	2012 (January - October)
1. Overcharging	16	21	11
2. Taximeter-related offences	34	9	55
3. Refusing hire	28	34	62
4. Failing to drive to destination by the most direct practicable route	39	27	30
5. Soliciting	52	27	34
6. Others [#]	1 451	1 439	1 533
Total:	1 620	1 557	1 725

Note:

Including misconduct of taxi drivers, failing to drive to destination, offences relating to the taxi driver identity plate, stopping elsewhere other than at a taxi stand while the taxi is available for hire, offences at the taxi stand (such as the driver's failure to sit in or stand beside the taxi when parking at a taxi stand), and offences relating to the use of safety belts, and so on.

DR ELIZABETH QUAT (in Cantonese): *President, according to the statistics provided by the police, the number of complaints involving malpractices of taxi drivers has continued to rise. However, there seems to be difficulties in instituting prosecutions, the penalties meted out by the Court are too lenient and the warning letters issued are not deterrent enough. To curb such situations, will the Bureau consider introducing some measures of greater deterrence? These measures may include, for instance, drawing up a blacklist or demerit points system, reminding tourists or other passengers in tourist areas to pay attention to the charging of taxi fares by the taximeter through special measures or installations at the pick-up/drop-off points in black spots where "black cabs" are found, or else they may choose not to take the taxi or file a complaint. Mobile phone applications may also be provided for tourists to access information on the approximate fares for journeying to and from major tourist locations, the hotlines for lodging relevant complaints, and so on, with a view to enhancing deterrence and publicity.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Insofar as the present circumstances are concerned, we have indeed noted a rising trend in the number of relevant complaints or suggestions received. Of the malpractices of taxi drivers, it seems that refusing hire and overcharging are more serious.

As pointed out by me in the main reply just now, in addition to the enhanced publicity by the TD, HKTB and the police, the police have also stepped up law enforcement and carried out intelligence-led operations in the hope of combating these malpractices more effectively. Insofar as the penalties are concerned, the amounts of fines meted out by the Court with respect to some cases are actually below the maximum penalty. Certainly, the Court will hand down judgments having regard to the gravity of individual cases and problems involved.

The question raised by Dr Elizabeth QUAT concerning whether a blacklist and even a demerit points system can be drawn up has actually been raised by some people in the community before. Our assessment of these suggestions is, however, that they are relatively complicated. In particular, in disputes involving taxi services, very often only the taxi drivers and passengers are on the scene and a lot of other objective evidence might not be available. To implement any blacklist or demerit points system, more comprehensive, objective and fair criteria must be put in place. During past discussions, both the Government and the taxi trade felt that current penalties, the mode of law enforcement and relevant publicity and public education can still achieve considerable effect in general.

MR GARY FAN (in Cantonese): *President, I would like to ask Secretary Prof Anthony CHEUNG a question about "taxi pooling" and soliciting. According to the paper provided by the Government in Annex I, the ratio of complaints received by the Transport Complaints Unit involving soliciting is relatively low, but the number of prosecutions initiated by the police as provided in Annex II is not at all small.*

May I ask the Government whether continuous monitoring has been carried out in certain communities to examine, for instance, whether overnight transport services are inadequate or modes of public transport other than taxis are absent in these communities, thereby contributing to "taxi pooling" and, as a result, passengers are compelled to take such taxis out of desperation? If continuous monitoring has been carried out, has the Government considered

concurrently providing additional overnight public transport in these communities, such as public light bus or bus services, with a view to reducing the risks borne by people opting for or compelled to go for "taxi pooling"?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):

President, there are bound to be discrepancies between the figures in Annex I and Annex II because the former sets out the numbers of complaints received by the Transport Complaints Unit under the Transport Advisory Committee. While some of the prosecution cases in Annex II might be referred to the police by the Transport Complaints Unit, some might be received by the police direct for subsequent follow-up.

Concerning the question raised by Mr Gary FAN, I do understand that late-night or early-morning transport services, especially public transport services, might be inadequate in certain districts. As a result, the public or residents have to rely on taxi services and are sometimes even compelled to go for the so-called "taxi pooling" services. Mr FAN's suggestion merits our attention. The Government will try to analyse these complaint statistics and study whether some analysis results can be deduced from these statistics involving different districts. The transport needs in different districts will also be reviewed from time to time.

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

MR GARY FAN (in Cantonese): *Has continuous monitoring been carried out by the Government? In other words, the Secretary did not answer my question just now. He merely said that he would review or re-examine the figures*

PRESIDENT (in Cantonese): Please sit down. Let me see if the Secretary has anything to add. Secretary, is there a need for continuous monitoring of the conditions of transport services in these districts?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Generally speaking, President, continuous monitoring will be carried out in the light of the transport needs in each district. As regards the question of whether a concrete statistical analysis can be made to ascertain the district involved in each complaint, as I said in my reply just now, we do not have statistical analyses in such detail.

MR MA FUNG-KWOK (in Cantonese): *President, I would like to raise a follow-up question. Has the Government noted instances of selecting passengers by some taxis? It is because the number of complaints involving refusing hire is very small, with only 62 such complaints received in 2012. However, the actual situation can be easily known. Some taxis near hotels are often found waiting for tourists with the "out of service" sign and selecting passengers. At taxi stands, some taxis are also found queuing up farther away from the stands for the purpose of selecting passengers. If the authorities take the initiative to conduct decoy operations against such conduct, I think prosecutions can be instituted and deterrence achieved very easily. Is the Government prepared to enhance measures in this aspect?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Transport and Housing, please.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): If we look up the complaint or prosecution figures, we will find that, generally speaking, there is indeed a rising trend of complaint cases against taxis. Among these cases, overcharging and refusing hire are more serious — of course, refusing hire might be attributed to selecting passengers. The TD will continue to take corresponding measures in the light of the trend and phenomenon reflected by these figures by, on the one hand, conducting publicity and, on the other, working in collaboration with the HKTB and the police to examine whether these malpractices can be combated through the efforts of the relevant departments. Certainly, it is most important that good communication is maintained with the taxi trade in the hope that the latter can exercise self-regulation. On receipt of complaint cases, we will also forward warning letters to relevant taxi owners in the hope that they will advise drivers who rent

their taxis. As regards the police or other aspects, I should perhaps defer to the Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): President, the police certainly take such cases seriously. To tackle these cases, as stated by Secretary Prof Anthony CHEUNG just now, efforts must be made in publicity and public education. As regards law enforcement, we also take it very seriously. For instance, against the various malpractices in the taxi trade, the Regional Crime Unit of Kowloon West, Traffic Kowloon West and the Yau Tsim Police District have recently joined hands in making dedicated efforts at black spots subjected to complaints by carrying out patrols in areas frequented by tourists, such as Tsim Sha Tsui. In addition to carrying out patrols at these black spots, decoy operations will be organized, too. Over the past few weeks, we have arrested the relevant taxi drivers involved in seven cases through such decoy operations.

I can also tell Members that such operations will continue. We will definitely convey a positive message to society that such malpractices will not be tolerated. Meanwhile, special hotlines have been set up by the police and the taxi trade respectively. Passengers are greatly encouraged to make complaints and reports. The taxi trade itself also pays great attention to this issue for it has set up a hotline. Its number, 3311 3366, is quite easy to remember. If passengers have any complaints, they may call 2527 7177. On receipt of complaints, we will definitely deal with them proactively.

MR WU CHI-WAI (in Cantonese): *President, I note from Annex I that the number of complaints against overcharging has been rising year on year by nearly 20% to 25% per annum. On the contrary, there is a falling trend in the efforts made by the police in instituting prosecutions against overcharging. Has the Bureau conducted a detailed follow-up investigation to examine why such an opposite phenomenon could have occurred? I would like to know the reasons.*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Transport and Housing, please.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the situation is indeed similar to the description made by Mr WU Chi-wai just now. We note from the statistics that there is a rising trend of complaints involving overcharging. As I said in reply to the questions raised by other Members, most of the complaints involving taxi services in general are on overcharging and refusing hire. As regards the number of prosecutions, certainly, the facts and evidence of specific complaints are often involved. Sometimes, the passengers might not be willing to testify or be able to provide sufficient information to the police. Therefore, they might affect the prosecutions to be instituted.

The complaint figures set out in Annex I refer to complaints received by the Transport Complaints Unit. However, the Unit may sometimes be unable to find the complainants even after receiving their complaints.

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

MR WU CHI-WAI (in Cantonese): *The Secretary has not answered my question. Actually, my question is: Has the Bureau examined the cause of such situations?*

PRESIDENT (in Cantonese): Do the two Secretaries have anything to add?

SECRETARY FOR SECURITY (in Cantonese): As explained by Secretary Prof Anthony CHEUNG just now, the main reason for the discrepancy between the complaint and prosecution figures is that we cannot do anything if a passenger filing a complaint does not provide concrete information but merely tells us, for instance, that he took a taxi somewhere recently and felt that the driver might have overcharged him. We must have concrete information, such as when the incident occurred, what taxi the passenger took and how much he had been overcharged. Moreover, we must have his contact so that we can locate him to obtain evidence before his case can be pursued further.

I believe Members must be aware that many passengers stay in Hong Kong for only a short period of time. They lodge complaints probably because they feel that they have been overcharged by taxi drivers. After receiving their complaints, however, we cannot get in touch with them for information. As a result, we have difficulties in following up their complaints. If we have adequate information, we will definitely pursue their complaints.

Let me cite an example. I would usually take a taxi at the airport every time I return to Hong Kong. Whenever I boarded a taxi, a security guard would hand me a card containing a complaint hotline number as well as the vehicle registration number of the taxi, and I would keep the card in my pocket. Likewise, passengers having any problems may bring along their cards to lodge complaints. If they do so, the information provided will be a lot clearer, thus facilitating us in law enforcement.

PRESIDENT (in Cantonese): We have spent more than 22 minutes and 30 seconds on this question. Fourth question.

Hospital Services for Kowloon East

4. **MR WONG KWOK-KIN** (in Cantonese): *President, the population of Kowloon East will surge with the completion of the various projects in the Kai Tak Development Area, and the problem of ageing population is increasingly serious. According to the statistics of the Hospital Authority (HA), the population of the Kowloon East Hospital Cluster (KE Cluster) was 990 100 in 2011, and is estimated to rise to 1 097 000 in 2019, of which the proportion of people aged 65 or above will rise from the existing 13% to 15%. In this connection, will the Government inform this Council:*

- (a) *whether it knows the respective median waiting time for the Accident and Emergency (A&E) services and the first appointments in specialist out-patient (SOP) clinics in the past three years, as well as the general out-patient attendances in 2011-2012 in the KE Cluster; as it has been reported that the quota for the general out-patient (GOP) clinics in the KE Cluster will increase next year, of the*

details, and list the additional quota, implementation time and number of additional posts by hospital;

- (b) as large-scale expansion works will be carried out in the United Christian Hospital (UCH) in the KE Cluster, whether the Government knows if the HA has formulated measures to properly meet the healthcare service demand of residents in the KE Cluster while the expansion works for the UCH are in progress; if so, of the details; if not, the reasons for that; and*
- (c) as the demand for healthcare services in Kowloon East will increase with the growing and ageing population, whether the Government has planned to reserve land in the Kai Tak Development Area for the construction of a general hospital; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, improving healthcare services has all along been an important task of the Government. The Government's recurrent expenditure on healthcare in 2012-2013 is nearly \$45 billion, which has increased by more than 40% when compared with 2007-2008. The amount of recurrent funding allocated to the HA has also increased by almost 40% from \$29.1 billion in 2007-2008 to \$40.4 billion in 2012-2013.

Apart from increasing recurrent expenditure, we have also, in the aspect of capital investment, implemented numerous works projects including expansion, redevelopment, reprovisioning and renovation of existing hospitals, improvement of hospital facilities and equipment, and building new hospitals, and so on.

There are three hospitals under the KE Cluster of the HA, namely UCH, Tseung Kwan O Hospital (TKOH) and Haven of Hope Hospital (HHH). They mainly serve people living in Kwun Tong, Tseung Kwan O and part of Sai Kung. Healthcare services provided by the Cluster range from primary care in the community, SOP services, A&E services to tertiary care.

My reply to the three parts of the question by Mr WONG Kwok-kin is as follows:

- (a) The GOP services of the HA are primarily targeted at the elderly, the low-income group and the chronically ill. Under the KE Cluster, there are currently five GOP clinics in Kwun Tong and three in Sai Kung (including Tseung Kwan O). For patients with chronic disease requiring follow-up consultations, they will be assigned a visiting time slot after each consultation and do not need to make separate appointments. For those with episodic diseases, consultation time slots at GOP clinics in the next 24 hours are available for booking through the HA's telephone appointment system.

In 2011-2012, a total of 816 554 attendances were recorded at the GOP clinics under the KE Cluster. The median waiting time for A&E services and that for first appointments in SOP clinics in the past three years are listed in Annex of the reply. The statistics show that the waiting time for critical, emergency and urgent patients at A&E Departments and that for priority 1 and priority 2 patients at SOP clinics have all been in line with the HA's performance pledges.

The HA has been actively enhancing its GOP services, including renovating the premises and upgrading facilities of GOP clinics, streamlining patient flow and improving the clinics' environment so as to keep pace with the development of GOP services. Take the Kwun Tong District as an example, the HA will strengthen and enhance the primary care services in that district in the coming years to dovetail with the Kwun Tong redevelopment project. Phase I of the Ngau Tau Kok Jockey Club GOP Clinic project was completed in 2010-2011, and Phase II of the project is underway. Moreover, the Kwun Tong Jockey Club Health Centre GOP Clinic will also be expanded and upgraded in 2013-2014 under the Kwun Tong redevelopment project. At the same time, the HA is trying to recruit additional staff as far as possible to increase the consultation capacity of the GOP clinics under the KE Cluster by about 65 000 in 2012-2013. The HA will continue to monitor the operation and service utilization of its GOP clinics, deploy manpower flexibly and co-ordinate the services among its various clusters with a view to meeting patients' needs for public primary care services.

- (b) The overall service strategy of the KE Cluster is to make good use of its existing resources, co-ordinate and rationalize the healthcare services in the Kowloon East region, and make proactive efforts to develop service improvement programmes to meet the increasing service demand in the region.

As for the UCH Expansion Project, the KE Cluster will devise a detailed decantation plan with the HA Head Office to ensure that the existing services provided for the public will be maintained during implementation of the expansion works. The HA will update the public on the progress and collect their views through various channels, such as District Councils, on a regular basis and address their concerns as appropriate.

In fact, works projects of other healthcare facilities under the KE Cluster will have been completed in phases for improvement of services when the UCH expansion works are in progress. For instance, the Ambulatory Block of the TKOH already started operation in March 2012. With upgraded facilities provided therein, the new Ambulatory Block is expected to enhance healthcare services such as out-patient and day surgery services in the KE Cluster. In addition, the improvement works of GOP clinics mentioned in Part (a) of my reply have already commenced in phases to provide better services for the public.

- (c) In planning for provision of public healthcare services, the HA takes into account a number of factors including the projected demand for healthcare services having regard to population growth and demographic changes, the growth rate of services of individual specialties and the possible changes in healthcare services utilization pattern, and so on. We have already reserved a site near the proposed Centre of Excellence in Paediatrics at Kai Tak Development Area (KTDA) for hospital development, and we will conduct review as appropriate to ensure that the long-term demand for healthcare services in the Kowloon District will be met.

Average Waiting Time for A&E services

<i>KE Cluster</i>	<i>Average Waiting Time (Minute) for A&E services</i>				
	<i>Critical</i>	<i>Emergency</i>	<i>Urgent</i>	<i>Semi-urgent</i>	<i>Non-urgent</i>
2009-2010	0	7	15	76	114
2010-2011	0	6	16	82	145
2011-2012	0	5	15	90	158

Notes:

- According to the HA's performance pledges, all patients who are triaged as critical patients will be treated immediately; 95% of patients triaged as emergency patients will be treated within 15 minutes and 90% of patients triaged as urgent patients will be treated within 30 minutes.
- A&E Departments under the HA are able to provide immediate treatment services for all critical patients and the waiting time for emergency patients and urgent patients also meets the performance pledges. This shows that the majority of patients with pressing medical needs have received timely medical treatment under the triage system.

Median Waiting Time for First Appointments in SOP clinics

2009-2010

<i>KE Cluster Specialty</i>	<i>Median Waiting Time for First Appointments in SOP clinics (Week)</i>		
	<i>Priority 1 category</i>	<i>Priority 2 category</i>	<i>Routine category</i>
Ear, Nose and Throat	<1	7	21
Gynaecology	1	7	64
Medicine	1	7	54
Ophthalmology	<1	7	135
Orthopaedics	<1	6	63
Paediatrics	<1	6	14
Psychiatry	<1	3	15
Surgery	1	7	99

2010-2011

<i>KE Cluster Specialty</i>	<i>Median Waiting Time for First Appointments in SOP clinics (Week)</i>		
	<i>Priority 1 category</i>	<i>Priority 2 category</i>	<i>Routine category</i>
Ear, Nose and Throat	<1	6	23
Gynaecology	1	7	91

<i>KE Cluster Specialty</i>	<i>Median Waiting Time for First Appointments in SOP clinics (Week)</i>		
	<i>Priority 1 category</i>	<i>Priority 2 category</i>	<i>Routine category</i>
Medicine	1	7	25
Ophthalmology	<1	7	119
Orthopaedics	<1	6	52
Paediatrics	<1	6	17
Psychiatry	<1	3	14
Surgery	1	7	88

2011-2012

<i>KE Cluster Specialty</i>	<i>Median Waiting Time for First Appointments in SOP clinics (Week)</i>		
	<i>Priority 1 category</i>	<i>Priority 2 category</i>	<i>Routine category</i>
Ear, Nose and Throat	<1	6	33
Gynaecology	1	6	66
Medicine	1	7	34
Ophthalmology	<1	7	25
Orthopaedics	<1	7	103
Paediatrics	<1	6	27
Psychiatry	<1	3	16
Surgery	1	7	98

Notes:

- The HA has put in place a triage system at its SOP clinics. Healthcare personnel will arrange the date of medical appointment for new patients on the basis of the urgency of their clinical conditions at the time of referral, which is determined with regard to various factors including the patients' clinical history, the presenting symptoms, the findings from physical examination and investigations, as well as information provided by primary care practitioners at the time of referral.
- Under the triage system, new SOP cases are classified into: priority 1 (urgent), priority 2 (semi-urgent) and routine categories. To ensure that patients with urgent conditions are given appropriate medical attention in a timely manner, the HA will arrange doctors to attend to priority 1 and priority 2 cases as soon as possible, and has set a performance pledge that the median waiting time for these two categories of new cases are within two weeks and eight weeks respectively. The HA has fulfilled its pledge by enabling patients with urgent conditions to be given timely services.

MR WONG KWOK-KIN (in Cantonese): *President, I notice that the Secretary in his reply has not mentioned anything about the Wong Tai Sin District in the KE*

Cluster, but as we all know, there is no general hospital in Wong Tai Sin and if the residents there have any emergency or serious medical conditions, they will have to go to another district and seek treatment at the Queen Elizabeth Hospital or the Kwong Wah Hospital and it is very inconvenient for them.

May I ask the Government if it has ever made any assessment based on urgency and priority considerations that apart from building a paediatric hospital in the KTDA, priority will be accorded to building a general hospital for the convenience of residents in Wong Tai Sin and Kowloon City?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have just mentioned that we have already reserved a site near the proposed Centre of Excellence in Paediatrics near KTDA for hospital development. In view of the demand for healthcare services in Kowloon, including areas like Wong Tai Sin, KTDA and Kwun Tong, we will draw up a detailed plan to take forward the project to build a general hospital at KTDA.

DR JOSEPH LEE (in Cantonese): *President, the Secretary in his reply has said that the consultation capacity of the GOP clinics will be increased by about 65 000 in 2012-2013 and that additional staff will be recruited. Moreover, Mr WONG Kwok-kin has also mentioned the problem of population ageing in his main question. The findings from the latest Census shows that in the areas of Wong Tai Sin, Kwun Tong, Sai Kung and East Kowloon, the number of elderly persons aged above 70 stands at as many as about 120 000 to 130 000. May I ask the Secretary whether or not any quota will be reserved for elderly persons in the abovementioned consultation capacity of 65 000 persons in the GOP clinics in order to meet their demand for healthcare services?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, when we undertake planning for service improvement and meeting future healthcare demand, we will consider all the influences brought about by population growth, including the impact of population ageing. So the plan has taken into account all the relevant factors. As for the Wong Tai Sin District mentioned repeatedly

by Members, with respect to hospital cluster services, the residents in that district are served by the Kowloon West Cluster. Of course, Wong Tai Sin is geographically closer to Kowloon East. However, at present, owing to the healthcare facilities available in Kowloon East, it is necessary to allocate some of the patients in the district to the Kowloon West Cluster in the design of hospital clusters and services delivered by the hospitals in that Cluster. However, as I have just said, when we consider the healthcare services in KTDA, we will also take into account the demand brought about by population growth in the related areas.

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

DR JOSEPH LEE (in Cantonese): *President, my supplementary question is straightforward enough. In the consultation capacity of 65 000 patients, has any quota been reserved for the some 120 000 to 130 000 elderly persons living in Kowloon East? It seems that the reply by the Secretary has wandered off to somewhere.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): As a matter of fact, a part of the consultation capacity of any GOP clinic is reserved for elderly persons.

DR LEUNG KA-LAU (in Cantonese): *President, according to the information I have at hand, the healthcare resources which every 1 000 persons in Kowloon East receive are \$3.82 million, but the corresponding figures are \$10 million for Kowloon Central and \$7.62 million for Hong Kong West. In other words, the healthcare resources which residents of Kowloon East get are not even half of those of the residents of Kowloon Central and Hong Kong West. The Secretary mentioned just now that the amount of recurrent funding allocated to the HA has been increasing over the last several years. Then what is the proportion of funding allocated to the KE Cluster? In 2006-2007, the relevant proportion was 10.1%. But during the years 2007-2008, 2008-2009 and up to 2010-2011, the proportion was still kept at 10.1%. Kowloon East has a population of 990 000 and it is about one seventh of the total population of Hong Kong. Based on this*

figure, the resources allocated to the KE Cluster should be 14% of the total funding. But for many years in the past, and despite increases in government funding to the HA, the resources which the KE Cluster gets are still only 10% and this shows that the healthcare resources which residents of Kowloon East enjoy are not even half of those enjoyed by the residents of Kowloon Central and Hong Kong West.

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

DR LEUNG KA-LAU (in Cantonese): *The question is very simple. Would the Secretary give an explanation on that?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the HA will take into account a number of factors when it allocates resources to different hospital clusters. The population ratio which Dr LEUNG Ka-lau has mentioned with respect to certain hospital clusters is one such factor. However, with respect to each of the clusters, there is at present no rigid requirement that hospitals in a certain cluster may only serve patients of that district alone and as we can often see, patients may also seek medical consultation at hospitals in another district for various reasons. Patients may live in another district, but they may go to another district for medical consultation because they have been doing that all along in a certain hospital.

So with respect to the overall allocation of resources, the HA must also consider the factor of service utilization in the hospitals and the ratio of residents in a certain cluster cannot be taken as the sole factor for consideration. Having said that, I agree that we should set down a certain direction so that the resources allocated to each cluster can catch up eventually with population growth in the districts under it.

MISS CHAN YUEN-HAN (in Cantonese): *President, I am grateful to Dr LEUNG Ka-lau for bringing up the problems faced by the KE Cluster. As a former Member of this Council from the East Kowloon Constituency, I have very profound feelings.*

It is fortunate that very often the Secretary will leave some sort of a hint in his reply to show that he also senses where the problem lies. I think that the Government should make use of the opportunity of building a Centre of Excellence in Paediatrics at KTDA to make better arrangements in the planning. Now the healthcare resources in the KE Cluster have always been thinned out, whereas the population there and the number of elderly persons are the largest in Hong Kong. It has also got the largest population of poor people. In fact, those who visit the public hospitals to seek medical consultation are mostly poor people. A commonly known fact is that of the females who suffer from breast cancer, the district in Hong Kong where most such patients are found at the latter stages of the disease come from Kwun Tong. This shows the problem of resources that exists. And with respect to the situation mentioned by Dr LEUNG Ka-lau, I had asked in an oral question raised by me during the last term of this Council.....

PRESIDENT (in Cantonese): Miss CHAN, please come to your supplementary question.

MISS CHAN YUEN-HAN (in Cantonese): *I asked the previous Secretary whether there were any criteria to go by in the allocation of resources in the hospital clusters. I only hope that as the new Secretary in office, Dr KO can do something and address squarely the problems in Kowloon East*

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

MISS CHAN YUEN-HAN (in Cantonese): *including the problems found in Wong Tai Sin. I hope the Secretary could tell us, will consideration be given to developing the new Centre of Excellence in Paediatrics into a general hospital and expanding its size and scale so as to address the abnormality of allocating some of the residents of Wong Tai Sin to the Kowloon West Cluster?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I would like to give a brief reply to the situation mentioned by Miss CHAN. Actually, I have also noted such a state of affairs and to a very large extent I agree with the

analysis she has made. So as I have explained earlier, when the HA is to allocate resources to each cluster, it will consider not only the population of that district but also the utilization of services provided by the existing hospitals in each cluster. This is the correct approach. However, when I am to allocate resources in future, I will try to head in a direction of achieving a close relationship between resource distribution and the population of each cluster.

Miss CHAN is right when she says that with the opportunity offered by the KTDA, we can undertake a review of the need for healthcare services in the district and make an analysis of it to see if we can better meet the demand for healthcare services from people living in the vicinity of the district by capitalizing on the development of the hospital in the KTDA. In fact, we have set aside a site in the KTDA for the construction of general hospital next to the Centre of Excellence in Paediatrics. We will explore how maximum benefits can be gained from these two sites so that we can serve the residents of Kowloon better.

MRS REGINA IP (in Cantonese): *President, I would also like to ask a question on resource allocation. I often receive complaints from doctors and some small hospitals saying that the head of each hospital cluster of the HA also the head of the largest hospital in the cluster, for example, the head of the KE Cluster is the head of the United Christian Hospital. The same situation exists in the other clusters. In such circumstances, the heads of the Clusters will have a conflict of interest when it comes to the allocation of resources and they will first consider the needs of the hospitals to which they belong and the other small hospitals are often deprived of resources allocated. Besides, when the number of patients waiting becomes larger, the amount of resources allocated will become larger as well. This will result in a situation where the hospitals are not willing to reduce the number of patients waiting, for it will lead to less resources allocated. May I ask if such a problem really exists and how the authorities will tackle it?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, with respect to the two parts of the supplementary question raised by Mrs Regina IP, I can say that for the first one, such a situation does exist. The head of a hospital cluster will usually station in the flagship hospital of the cluster concerned. However, he also bears responsibility for healthcare services in the cluster overall

and he cannot act in any biased manner to the small hospitals because he is only answerable to the large hospital to which he belongs. If this is really such a situation, we will make sure that the HA will take action to rectify it.

As for the second part, would the Honourable Member please repeat

MRS REGINA IP (in Cantonese): *President, this is a management problem*
.....

PRESIDENT (in Cantonese): Mrs Regina IP, please repeat the part which the Secretary has yet to answer.

MRS REGINA IP (in Cantonese): *Yes, I was explaining my question to the Secretary.*

PRESIDENT (in Cantonese): Your question is about the number of patients waiting and resource allocation.

MRS REGINA IP (in Cantonese): *This is a common problem in management. If the problem is not addressed, the longer the waiting time for the patients, the more resources will be obtained and the result is that the hospitals will not be interested in shortening the waiting time for patients.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we have also noted this phenomenon. Some front-line staff have really told us about that situation. So as we monitor the services provided by the HA, we will ensure that it will not be allocated extra resources just because the waiting time for the patients has increased and we must be very clear about whether the services provided by the hospitals are efficient. If the services provided are efficient and the waiting time concerned can truly show that there is a need for such services, then we will allocate more resources to the hospital concerned.

DR HELENA WONG (in Cantonese): *President, with respect to the Government's plan to build a Centre of Excellence in Paediatrics at KTDA, since it is pointed out in the Secretary's reply that a site near the Centre has been reserved for hospital development, may I ask if the Government will consider revising the development plan for that Centre and undertake expansion to change it into a general hospital serving the residents of Kowloon East and Kowloon West while including a paediatrics centre, so as to cope with the future demand for healthcare services in Kowloon?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, with respect to the supplementary question from Dr WONG, since tenders are being invited to build a Centre of Excellence in Paediatrics and the tenders submitted are being vetted at present, so I can say that the project is set to commence. But detailed planning for the site next to the Centre for the construction of a general hospital has not yet started. I agree with Members' view that if there can be better synergy between this Centre and the proposed general hospital next to it, then although they are different projects in planning and works, provided that all necessary steps are taken to ensure better synergy of these two facilities, they can provide better service to the residents of the districts concerned in Kowloon.*

PRESIDENT (in Cantonese): *We have spent more than 22 minutes and 30 seconds on this question. Fifth question.*

Application of Sections 3 and 8 of Prevention of Bribery Ordinance to Chief Executive

5. **MR DENNIS KWOK** (in Cantonese): *President, the Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests (the Report) released in May this year put forward a number of recommendations, including the application of sections 3 and 8 of the Prevention of Bribery Ordinance (POBO) to the Chief Executive. The then Chief Executive-elect had publicly stated that he would seriously consider the various recommendations in the Report and would implement them expeditiously after he took office. However, the Government of the current term has taken office for more than five months but has not yet put forward any specific proposal*

or bill to amend the POBO. In this connection, will the Government inform this Council whether it has decided to accept the recommendation in the Report to apply sections 3 and 8 of the POBO to the Chief Executive; if it has, when it will introduce such a bill to this Council; if not, of the reasons for that?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests (IRC), chaired by Mr Andrew LI Kwok-nang, former Chief Justice of the Court of Final Appeal, was responsible for reviewing the present regulatory system for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Members of the Executive Council and politically appointed officials (PAOs). The IRC submitted its report (the Report) on 31 May 2012, putting forward a total of 36 recommendations. Covering several major areas, these recommendations include revisions to the Code for Officials Under the Political Appointment System (the PAO Code) currently applicable to PAOs for refining the regulatory regime for the declaration and handling of potential conflicts of interests, and the acceptance of advantages and entertainment; making recommendations to such matters as the Chief Executive's observance to related provisions in the PAO Code and the declaration system applicable to Executive Council Members; as well as extending the application of sections 3 and 8 of the existing POBO to the Chief Executive.

As the public has high expectations on the integrity of public officials, it is therefore crucial to put in place a sound system to prevent and handle potential conflicts of interests involving public officials. The Administration had, on the day when the Report was released, expressed that it agreed with the recommendations therein in principle, and would consider how to follow up and implement individual recommendations. The incumbent Chief Executive, on the day the Report was released, made a public statement in his capacity as the Chief Executive-elect that he welcomed the Report and would consider its various recommendations seriously and seek to implement them as soon as possible after he took office.

In fact, the Administration has implemented nearly half of the recommendations, including the amendments to the PAO Code on administrative arrangements for setting out requirements for the handling of conflicts of interests

and other matters involving PAOs. For instance, the amended PAO Code makes it clear that in deciding whether to accept any advantage, PAOs shall, apart from observing the relevant legal provisions, take into account matters such as the frequency or excessive nature of the advantage, the relationship between the official and the offeror, and the character or reputation of the offeror. In addition, separate and specific provisions and guidelines are set out with a view to reminding PAOs to have regard to public perception before accepting entertainment, consider whether the entertainment will lead to a conflict of interest with their official duties, cause them to take upon any improper obligations, or make others believe that their judgment will be compromised. The amended PAO Code also sets out that the Chief Executive shall, in accordance with proper procedures, decide on cases of alleged breaches of the PAO Code relating to conflicts of interests by PAOs and the related mechanism for sanctions. The amended PAO Code applies to PAOs of the current term of Government.

Although the PAO Code does not apply to the Chief Executive, the Chief Executive subscribes to the spirit behind the IRC's recommendations, that is, the Chief Executive must observe the highest standards of conduct, set a good example for all and observe rules at least as vigorous as those applied to PAOs and the Civil Service, in order to maintain public trust in the integrity of the Government. The Chief Executive has also indicated that he would observe the rules in the PAO Code where applicable to ensure that no actual or potential conflict arises between his public duties and private interests. As a matter of fact, upon assuming office, the Chief Executive has made a declaration on his financial and other interests in accordance with the PAO Code. The open part of his declaration has been uploaded to the web for public inspection.

The Administration is actively following up the remaining recommendations, including the formulation of guidelines on how the Chief Executive should consider and handle conflict of interest matters concerning PAOs, the review of the control regime for post-office outside work of PAOs during the interim review of the Political Appointment System to be conducted later, and consider amending the POBO to the effect that sections 3 and 8 of the Ordinance will be applicable to the Chief Executive. Comparing to the generally completed revision of the PAO Code and the drafting of the relevant guidelines in the pipeline, the implementation of the recommendations on legislative amendments requires particularly great prudence.

Regarding the recommendations on the amendments of the POBO, the Report proposes to amend section 3 of the Ordinance to the effect that it will be a criminal offence for the Chief Executive to solicit or accept any advantage without the general permission or special permission of a statutory independent committee to be set up specifically for this purpose. The Report also makes a series of recommendations on the composition and operation of the proposed independent committee.

In addition, the IRC proposes to amend section 8 of the POBO, making it a criminal offence for any person to offer any advantage to the Chief Executive, without lawful authority or reasonable excuse, where the person has any dealings with the Government.

The Administration has to exercise great care as the above proposals involve legislative amendments. The above proposals will be examined in detail, including how they can be implemented as far as operation is concerned and the possible impact on the existing POBO. For instance, if the existing section 8 of the POBO is extended to the effect that it is directly applicable to persons offering advantage to the Chief Executive, members of the public may contravene the POBO when they, on account of their having certain dealings with the Government, offer modest gifts or souvenirs to the Chief Executive during district visits as normal gestures of courtesy or goodwill. To this end, the IRC recommends that the breach of the provisions concerned should not include any person offering any advantage to the Chief Executive where the advantage offered to the Chief Executive is covered by the general permission given to him. As there was no precedent in the POBO regarding the above exemption recommended by the IRC, we have to carefully examine the proposal to ascertain whether it will impact on the effective implementation of section 8 of the existing POBO and its entirety in order to avoid any conflict with the well-established regulatory regime currently applicable to prescribed officers including PAOs and civil servants.

To conclude, in considering the way forward for the implementation of the IRC's recommendations on the amendments to the POBO, the Administration should examine all relevant issues in a holistic and thorough manner. Despite the new Administration's extremely heavy workload during the initial five months of its term, we have attached great importance to the IRC's recommendations, and are conducting a detailed study on how to implement the recommendations on

amending the POBO. The Administration shall consult the Legislative Council on the study findings once there is further progress.

MR DENNIS KWOK (in Cantonese): *President, the Chief Secretary mentioned earlier in the main reply that the public has high expectations on the integrity of public officers. She also mentioned that the Chief Executive must observe the highest standards of conduct and set a good example for all, an example of observing the highest standards of conduct and setting a good example for all.*

Chief Secretary, when the incumbent Chief Executive faces such a big problem concerning his integrity, why does the Government not seize the opportunity to immediately take on board the recommendations made by Mr Andrew LI and introduce amendments to the POBO? It is now most opportune for the Government to try to restore public confidence in the Government, especially in the Chief Executive.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): *President, as I said in the main reply earlier on, making legislative amendments is a solemn matter that requires prudence and care. It is not a matter of seizing the opportunity. The Government's position is that we are actively following up these recommendations and studying the amendment of the POBO to the effect that sections 3 and 8 will be applicable to the Chief Executive. We are actively carrying out follow-up work. We hope that a complete set of all legislative amendments can be drawn up and then submitted to the Legislative Council for discussion.*

MR TAM YIU-CHUNG (in Cantonese): *President, the Chief Secretary mentioned in her response the recommendation on the amendment of the POBO. The Report recommends that section 3 of the POBO be amended to make it a criminal offence for the Chief Executive to solicit or accept any advantage without the general permission or special permission of a statutory independent committee.*

Will the Government further study the constitutional status of this independent committee and whether such a committee is mentioned in any provision of the Basic Law? Besides, this committee will have a very important

status if it has the power to give permission to the Chief Executive for acceptance of advantage. In this connection, has the Administration conducted studies or consulted members of the IRC on the implementation of this recommendation? Has the Government consulted their views or conducted further studies on this recommendation? May I ask the Chief Secretary whether the Government has looked into this issue?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): In making this recommendation, the IRC stated in the Report that the IRC recognizes the unique constitutional status of the office of the Chief Executive. He is the head of the Hong Kong Special Administrative Region and the Government of the Special Administrative Region, and he is accountable to the Central People's Government and the Hong Kong Special Administrative Region. In view of this, I think the IRC has considered the issue raised by Mr TAM.

In response to Mr TAM's supplementary question, I would like to say that before implementing the IRC's recommendations, especially those relating to legislative amendments, we must exercise great care and prudence and also deal with other problems that may possibly arise from the recommendations. Mr TAM's question has actually raised some issues which are exactly issues we have to examine in detail.

MS EMILY LAU (in Cantonese): *President, the Chief Executive of the last term is known as "covetous TSANG", and what he did has infuriated the community. After Mr Andrew LI had published the Report, we all expected that it would help plug some of the loopholes. Many people now have a lot of doubts about whether the incumbent Government is clean and law-abiding or whether it is dedicated to its duties. For this reason, President, we have asked the authorities on many occasions whether the recommendations in Mr Andrew LI's report will be expeditiously and practically implemented, but according to the outcome announced today, it turns out that further studies will have to be conducted.*

Moreover, President, the pro-government Members even questioned whether this should really be done on the pretext that these incidents happened in the last term of the Government. How many more corrupt governments must we have in order to make you willing to do something?

PRESIDENT (in Cantonese): Ms LAU, please state your supplementary question.

MS EMILY LAU (in Cantonese): *President, members of the public are very angry and so, I hope that the Government can expeditiously implement the recommendations and introduce legislative amendments.*

But President, my question is about the PAO Code, because it turns out to have been already revised without the Legislative Council knowing it. We have not been consulted; nor has the revised version been shown to us. May I ask the Chief Secretary to tell us, particularly in respect of sanctions, what types of breaches will be subject to what sanctions, and whether it should really be stated in express terms that the Chief Executive is also subject to the regulation of the PAO Code?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I think I have already pointed out in the main reply earlier on that despite the extremely heavy workload and a multitude of issues that need to be handled, including many livelihood issues, during the initial five months of the term of this Government, we have expeditiously, practically and actively followed up the recommendations of the review, which is in line with Ms LAU's expectation.

The Code that we have already revised refers to the Code for Officials Under the Political Appointment System. The revision work has generally been completed, and the revised Code applies to all PAOs in the Government of the current term. The revised PAO Code can also be found on the Internet for public inspection. Basically, its contents are revised with reference to the provisions mentioned by the IRC led by Mr Andrew LI.

PRESIDENT (in Cantonese): Ms LAU, has your supplementary question not been answered?

MS EMILY LAU (in Cantonese): *President, my question was about sanctions — sorry, I have not browsed such information on the Internet — Will the Secretary*

please tell me what sanctions will be imposed and why the PAO Code cannot state expressly that compliance by the Chief Executive is also required?

PRESIDENT (in Cantonese): Ms LAU, under Rule 25(1)(k) of the Rules of Procedure, a Member shall not ask a question seeking information which can be accessed in open documents. Chief Secretary, do you wish to add anything on whether it should be stated that the PAO Code applies to the Chief Executive?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): As I pointed out in the main reply, the Chief Executive voluntarily observes the rules in the PAO Code where applicable, but some of the provisions in the PAO Code may not be fully applicable to the Chief Executive. Therefore, in the current-term Government, the Chief Executive has done his part in voluntarily observing the PAO Code where applicable.

DR FERNANDO CHEUNG (in Cantonese): *President, there was the opportunity to amend the POBO in the last two terms of the Legislative Council. Members in the democratic camp had then proposed extending the application of the POBO to the Chief Executive but their proposal was rejected and subsequently, the "covetous TSANG" incidents occurred. The IRC chaired by Mr Andrew LI has now recommended that the POBO be amended to bring the Chief Executive under the regulation of sections 3 and 8. As the Chief Secretary said in her reply earlier on, they are handling the matter with great care and actively following it up in an expeditious manner.*

My question is: When the credibility of the SAR Government and the Chief Executive has gone bankrupt, can the Chief Secretary provide a timetable to tell us when the study will be completed, so that Mr Andrew LI's recommendations will be expeditiously accepted by applying the POBO to the Chief Executive?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, as I said in the main reply, we are examining the issues in a thorough manner but we must first come up with a complete set of legislative proposals, rather than putting forward proposals in a piecemeal manner, and the amendment of certain legal provisions will impact on the implementation of the POBO in its entirety if

the amendments are not carefully examined. This is an issue of enormous importance. So, please forgive me for not being able to provide a specific legislative timetable to Members today. But the important point is that after the study is completed, we will consult the relevant panel of the Legislative Council before tabling the proposals on the legislative amendments.

DR FERNANDO CHEUNG (in Cantonese): *Can the Government at least tell us explicitly whether or not this task can be completed within this term of the Government?*

PRESIDENT (in Cantonese): Dr CHEUNG, you certainly can request the current-term Government to complete the relevant task, but the Chief Secretary has already answered your supplementary question.

DR KENNETH CHAN (in Cantonese): *President, in the Chief Secretary's reply some examples are cited to tell us that, for instance, during district visits by the Chief Executive, members of the public who kindly offered some modest gifts may breach section 8 of the POBO and so, careful studies are warranted.*

But if my understanding is correct, section 8 of the POBO already applies to civil servants and accountable officials. So, when these scenarios arise, do they really consider them so difficult to handle to the extent that they even hold the view that the application of section 8 to the Chief Executive will lead to serious problems and such a long time is, therefore, needed to handle them? Chief Secretary, specifically, is it wrong to cite this example and is it improper to use it in this reply?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I noticed that this example is also mentioned in the Report of the IRC. The IRC is very thoughtful in providing a way out, because it is often necessary to think of a specific way to solve the problem in order for the proposed amendments to be put into practice.

So, on this point, what I am trying to say in citing this example is this: We all know that the IRC is of the view that the problem can be solved by seeking

general permission and exempting the persons concerned from the provisions. But in spite of this, there is no precedent in the POBO regarding such an exemption arrangement and therefore, this point must be studied carefully. This study is conducted jointly with the Department of Justice, in order to examine the proposal carefully from a legal viewpoint. We are not saying that we consider this an insurmountable problem.

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

DR KENNETH CHAN (in Cantonese): *President, I wish to ask a follow-up. What will civil servants and accountable officials do to avoid breaching section 8 of the POBO when they face these specific circumstances now?*

PRESIDENT (in Cantonese): Dr CHAN, the problem that you have raised was discussed in detail during the deliberations on the Prevention of Bribery Ordinance in the last term of this Council. If the person who offered the gift has dealings with the department to which the official belongs, the offering of the gift is prohibited, but the situation of the Chief Executive is different because he may come into contact with all the people who have dealings with the Government. Let me see if the Chief Secretary has anything to add.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, thank you for providing the supplementary information for me. I have nothing to add.

MR ALAN LEONG (in Cantonese): *President, I believe the Chief Secretary will agree that it is an important proposal to extend the application of sections 3 and 8 of the POBO to the Chief Executive. In the main reply the Chief Secretary pointed out that Mr LEUNG Chun-ying already stated on 31 May — the day when the Report was released — that he agreed to the recommendations of the Report.*

President, in the last three paragraphs of the main reply, the Chief Secretary presented some arguments which I consider rather hollow and refused to introduce amendments to section 8 of the POBO immediately. I certainly wish that the Chief Secretary can tell me what issues are actually included when she said that the Government would examine all issues in a holistic and thorough manner, because what she said is far too general indeed. If she can give me a reply, I would very much welcome it.

My supplementary question is mainly this: According to her reply, does it mean that section 3 is all very fine? If section 3 does not have any problem, why is section 3 not amended? She is saying that section 8 has some problems. What about section 3? Because both sections 3 and 8 are most important of all. She said that section 8 has some problems. Then what about section 3?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I have cited an example pertaining to section 8, but it does not mean that the amendment to section 3 is applicable to the Chief Executive and hence requires no detailed study. I must clarify this point here. The whole set of proposals involves legislative amendments which must be examined thoroughly. This is why I said they must be studied in a holistic manner, and we hope to put forward a complete set of proposed legislative amendments, rather than putting forward proposals in a piecemeal manner. This also applies to section 3.

DR KWOK KA-KI (in Cantonese): *President, the IRC led by the former Chief Justice of the Court of Final Appeal has spent a very long time working out the 36 recommendations. The Chief Secretary pointed out in the fourth paragraph of her reply that the Chief Executive must observe the highest standards of conduct and set a good example for all. In the past, there was the "covetous TSANG" and now, there is a Chief Executive who uses lies to cover up other lies, and the wife of the Chief Executive has set up a company to carry out some.....*

PRESIDENT (in Cantonese): Dr KWOK, please do not raise matters that are not related to the main question.

DR KWOK KA-KI (in Cantonese):*I beg your pardon, President. My supplementary question is this: In view of these situations when the Chief Executive has neither stringently observed the standards of conduct nor set a good example, will the Government be more determined to expedite the amendment exercise in order to extend the application of sections 3 and 8 of the POBO to the Chief Executive, the Executive Council and the spouse of the Chief Executive?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): The Government fully appreciates that the public has very high expectations on the integrity and probity of public officers. We also support the view of the Report that the Chief Executive should, in principle, observe rules at least as rigorous as those applied to PAOs and the Civil Service under his leadership, in order to maintain public trust. This spirit was supported by the last term of the Government. The current-term Government will follow this direction and actively follow up the series of recommendations made by the IRC.

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

DR KWOK KA-KI (in Cantonese): *Will the Government, in view of these situations, expedite the amendment of sections 3 and 8 of the POBO to the effect that these sections will apply to the Chief Executive, Members of the Executive Council and the spouse of the Chief Executive?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, as I reiterated earlier on, we expect public officers to be honest and law-abiding and we understand public expectations of them. Individual cases will not directly affect our determination to address this issue. We are determined to uphold the spirit of probity as expected by the public of the Chief Executive, PAOs and the entire Civil Service.

PRESIDENT (in Cantonese): We have spent almost 23 minutes and 30 seconds on this question. Last oral question.

Monitoring Performance of MPF Schemes

6. **MR MARTIN LIAO** (in Cantonese): *Under the Employee Choice Arrangement (commonly known as "Semi-portability") which has been implemented since last month, employees may transfer the accrued benefits derived from their contributions to the Mandatory Provident Fund (MPF) schemes to the MPF schemes operated by the trustees they prefer. Some members of the public have relayed to me that they were perplexed and confused as there are many MPF schemes and types of funds available for their choices in the market. They worry that they may wrongly choose those MPF schemes with poor investment performances. However, apart from providing a comparison table on the fund expense ratios of various MPF schemes, the Mandatory Provident Fund Schemes Authority (MPFA) has all along not provided information on the comparison of the investment performances of various MPF schemes. Instead, the Consumer Council published a research report in October this year regarding the fees and rates of return of MPF schemes. Moreover, some other members of the public have also relayed to me their wish for more investment options offered by MPF schemes, so as to increase the returns. In this connection, will the Government inform this Council:*

- (a) *whether it knows why the MPFA has all along not provided information on the comparison of the investment performances of MPF schemes; whether the MPFA will publish such kind of information on a regular basis, so as to assist employees and employers in making smart choices; whether it knows if the MPFA will establish a monitoring mechanism to urge the trustees to improve the investment performances of the MPF schemes they manage, such as requiring trustees with continued poor investment performances to submit reports and issuing warnings to them, and considering cancellation of the registration of the trustees concerned if there is no improvement despite repeated warnings; if so, of the details; if not, the reasons for that;*
- (b) *given that some members of the public have pointed out that the non-MPF funds under quite a number of fund investment companies have good investment performances, but the MPF schemes managed by these companies as trustees, with similar fees charged, have poor investment performances, whether it knows if the MPFA has*

conducted studies on the aforesaid situation; if no such study has been conducted, of the reasons for that; if such studies have been conducted, of the outcome, and if such a situation does exist, whether the MPFA has requested the trustees concerned to give an account for that; and

- (c) *whether the Government will consider reforming the MPF schemes to provide more portfolios and modes of investment for members of the public to choose, such as allowing members of the public to use their contributions as down payment for buying properties or for taking out medical insurance; if it will, of the details; if not, the reasons for that?*

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

- (a) The MPFA has launched intensive publicity advising members the factors they should take into account in making decisions as regards their MPF investment, namely the products (including the range available, their risk level and past performance), services, fees and charges, as well as personal factors (including the investment objective and risk tolerance level of the member concerned). In this regard, the MPFA considers it important for the public to understand that past investment performance is not a reliable indicator of future performance, and hence any direct comparison between investment performance of different MPF schemes/funds should be read in proper context.

The MPFA has been publishing information on the investment returns by fund types regularly since 2006, and posted in its website the fund fact sheet of each MPF fund, which sets out performance information over the periods of one, five and 10 years respectively preceding the report date. The MPFA also requires trustees to provide such performance information in a standardized presentation to facilitate comparison by interested scheme members. Moreover, there are various sources of information on the performance of MPF funds. Since 2007, the MPFA has included in its website a

hyperlink to one of them, namely the website of the Hong Kong Investment Fund Association where the comparative performance information of each individual fund is provided. Starting from this month, the MPFA will host the information in its website direct. Overall, the Government does agree that the MPFA should continuously enhance the information disclosure in the MPF System, taking into account the views of the community.

On the monitoring of MPF trustees, under the Mandatory Provident Fund Schemes Ordinance (MPFSO), approved trustees must ensure that their investment managers act in the interests of scheme members and have a duty to supervise and exercise proper control over the investment managers to ensure compliance with the statutory investment requirements under the MPFSO. The MPFA has issued guidance and instructions on how approved trustees are expected to fulfil the aforementioned duties, and the MPFA monitors their compliance through on-site visits and other supervisory means such as reviewing regular reports from them.

- (b) It is worth noting that direct comparison of the fees charged by MPF funds and non-MPF funds as well as their respective investment returns cannot be fairly done. By way of illustration, the fee structure of MPF funds and non-MPF funds are quite different in that MPF funds do not charge any subscription and redemption charge as in the case of non-MPF funds, while the recurrent charge of MPF funds that covers administrative cost like collecting contributions from employers and following up on default contribution cases is not applicable in the case of non-MPF funds. As for investment returns, it is important to note that the investment strategy of MPF funds is generally more long term and risk-cautious in accordance with the investment-related requirements prescribed in the MPFSO, as compared with some other investment funds in the retail market, considering the role of the MPF System in helping scheme members start saving for their retirement needs early. Therefore it is inappropriate to make direct comparison between the short-term investment performance of MPF funds vis-à-vis non-MPF funds. This notwithstanding, according to a snapshot review of the investment performance conducted by the MPFA for the period from October 2011 to September 2012, MPF funds have achieved

comparable performance to non-MPF funds. This is broadly consistent with an earlier review on MPF equity funds commissioned by the MPFA, which showed that they had for the period up to end 2008 outperformed comparable authorized non-MPF equity funds and achieved comparable investment performance as that of corresponding index funds.

In this connection, the Government will work closely with the MPFA on the reform to the MPF System aimed to substantially drive down MPF fees within a reasonable time frame, which in turn will increase the return to scheme members.

- (c) The MPF System is an important pillar of our retirement system, designed to help our working population start saving for their retirement early. The few systems elsewhere which provide for withdrawal of benefits for a wide variety of purposes including downpayment for buying properties have a much wider social objective beyond the ambit of our MPF System, and they are premised on considerably higher contribution rates which our community is not yet ready to take on.

In the light of operational experience gained and comments received over the past years, the MPFA has carried out a review of the regulation of withdrawal of MPF benefits earlier and completed a public consultation thereon earlier this year. There is majority support for providing an express option to withdraw MPF accrued benefits in phases upon members reaching 65, and to allow early withdrawal by members certified to have suffered terminal illness. The MPFA is drawing up the detailed legislative proposal.

Going forward, the Government will work with the MPFA on the reform of the MPF System, which will include a review of the fund choices under the System. While it is important to provide scheme members with investment choices, we need to be mindful that the choices should provide real value to employees for retirement protection. We will engage the community in pursuing this review and considering other possible reforms to the MPF System.

MR MARTIN LIAO (in Cantonese): *The Secretary said earlier that the focus of MPF funds was long-term return and risk-cautious. However, in the past five years, the returns of the 159 funds (about 45%) in the market all recorded "reds", where the loss incurred by certain funds was as high as 14% per annum. I consider the situation is unacceptable. It is more apt to describe this as "long-term loss" rather than "long-term return". May I ask whether the authorities will consider beefing up the monitoring mechanism in view of the circumstance and what measures will be introduced to pressurize fund managers into improving their performance?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I have said in the main reply that on the whole, the performance of MPF funds is generally comparable to index funds in the market in terms of the rate of return. This is the overall situation. Certainly, when the performance of individual funds and even the majority of the funds runs "in the red" for a certain period, it is in some measure a reflection of the market situation. Therefore, the examination of the returns of MPF funds must include an analysis of the overall figures.

Regarding the proposals for reforming the MPF, we have many ideas. The MPFA has recently issued the study report and put forth some reform proposals. We will discuss the various proposals with the MPFA and the public, hoping to parcel up and promote the proposals in the course.

DR LAU WONG-FAT (in Cantonese): *My question is about the expensive management fees yet poor performance of MFP funds, for many people consider that the Government should be blamed for forcing them to incur such losses. Some people from the labour class and the grassroots have relayed to me that they know nothing about choosing the investment portfolios of MPF funds and they have lost their confidence in MPF schemes. They suggest amending the MPF schemes to offer wage earners the option of placing their contributions with banks in the form of fixed deposits and be exempted the management fees. Will the Government consider this proposal?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I very much agree with the views prompting this supplementary question. As I have pointed out a number of times in the Legislative Council that, first, I think there is room for reduction in MPF fees, so the MPFA has been invited to draft the study report. The MPFA consultancy report has pointed out areas where fee reduction is possible. The administration fees charged is a case in point. In this connection, we will follow up.

As for investment options, I recall pointing out at a previous meeting of the Legislative Council that I consider there are too many options for MPF funds and this makes choice difficult for investors and the public. In this connection, we and the MPFA have some ideas, and we hope that improvement in some measure will be made in respect of investment fund options. Yet, this may involve an expansion of the terms of reference of the MPFA. We will follow up this issue.

MR CHAN KIN-POR (in Cantonese): *It is pointed out in the main reply that for the period between the establishment of the MPF system and 2008, the investment performance of MPF equity funds is comparable to that of corresponding index funds. However, the overall expense ratio of various index funds is in general lower than 1%, which is far lower than the average ratio of 1.74% for MPF equity funds. At present, over 60% of the balance of MPF is invested in equity funds. So, if a large number of employees switch to index funds, the overall expense ratio of MPF will drop substantially immediately. May I ask the Government how more index funds can be offered to the public? For among the 40 MPF schemes now available on the market, only 16 schemes offer low-charge index funds. May I ask the Government how the offer of more options can be promoted and the public helped to know the various merits of index funds? Certainly, the demerits of index funds should also be noted. But given the many merits of index funds, how will the Government help the public to get more information about this?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): In the supplementary question, Mr CHAN has raised a point about which we are also concerned. At present, the public consider that the MPF fees are expensive, yet I have to point out that schemes charging lower fees are also

available now. Besides, these low-charge schemes may not necessarily mean poorer choices. The management of index funds is relatively passive, which basically follows the fluctuation of the market, and the fees charged are relatively cheaper. So, it may be a desirable choice. To promote this choice, we have to step up our promotion work, for we have to let the public know that higher management fees sometimes does not necessarily mean better performance. We have to give publicity to this point. In addition to publicity, the MPFA will start urging trustees to provide various types of low-fee funds, and it will also strongly request trustees to promote the merits of these funds to MPF scheme members. We will carry out the work in this aspect. In the long run, will the authorities make it a mandatory requirement for MPF schemes or various trustees to include these funds? In this connection, we will consider proactive follow-up actions.

MR GARY FAN (in Cantonese): *My question to the Government is about the existing inadequacies of the MPF System, which many colleagues have pointed out, that is, the expensive fund management fees and undesirable returns. The objective of the MPF System is to provide retirement protection for wage earners. May I ask the Government whether it has ever considered capping the management fees charged by MPF schemes? Moreover, may I ask whether it has considered linking the management fees of MPF schemes to their fund performance, so that funds with unsatisfactory performance will be eliminated, thus protecting the rights and benefits of the public? If not, what are the reasons?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I always insist on addressing this problem squarely, and I consider there is room for fee reduction. I have read the study report of the MPFA, wherein several directions for reform are proposed, one of which being considering imposing a cap on fees. We will continue following up this. Surely, I have to point out that different coverage of a fee cap may be set. If all funds are required to set a fee cap, it will reduce the options available, and the public will need to understand this. If only certain types of funds are required to set a fee cap, it may be practicable. However, we have to conduct studies first.

In my view, we may adopt a multi-pronged approach in fee reduction. These include the short-term measure of improving administrative systems to

reduce the fees charged. At the same time, more competition should be introduced. In the latter case, we do not rule out the possibility of expand the terms of reference of the MPFA to enable it to regulate fees charged by funds. We need to conduct studies on these issues, and we will consult the public.

MISS CHAN YUEN-HAN (in Cantonese): *The earlier reply of the Secretary has aroused a lot of feelings in me. The Secretary said that the investment return of MPF is comparable to funds outside at present. If the Secretary's remark is true, the whole world will be at peace, and wage earners would not consider the setting up of the MPF regrettable. More often than not, they think that the MPF should be abolished, and they have been grumbling about this. Back then on the implementation of retirement protection, we had raised these concerns and considered that the Government should address the issues, and it should examine ways to provide more platforms for the public to choose in times of low investment return and substantial deficit. It seems that the Government has some ideas about this now. May I ask the Secretary and the Government, that in the face of the present predicament, whether the Government will reconsider the comprehensive retirement proposal put forth by the Hong Kong Federation of Trade Unions (FTU)? I mean social security similar to that under the MPF which can protect the public from sustaining losses. I hope the Secretary will answer this for the MPF has now caused extensive complaints in society*

PRESIDENT (in Cantonese): Miss CHAN, you have stated your supplementary question, please be seated.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, thanks to Miss CHAN for the supplementary question. We consider that the fund options under MPF schemes should include low-risk products. It is a fact that low-risk products are offered as an option, yet we notice that the overall cost is on the high side. Therefore, in our view, to build up confidence of the public in the system, we have to work on the cost, that is, to reduce the cost, and properly promote funds with guaranteed returns. We certainly cannot overlook that some people may prefer equity funds. For this reason, we should also offer such options, yet we have to ensure that the equity funds offered are in line with the principle of providing long-term saving

investment for retirement and with enhanced transparency. We are now following up the issue proactively with the MPFA on various fronts, and we are confident and determined to make improvement in this area.

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

MISS CHAN YUEN-HAN (in Cantonese): *In the face of the problem-fraught MPF System, will the Government consider the proposals put forth by the community, including the comprehensive retirement proposal of the FTU? The Secretary has not answered my supplementary question direct, for he just said consideration will*

PRESIDENT (in Cantonese): Miss CHAN, please be seated. Your question is in fact beyond the scope of the main question. I will see whether the Secretary has anything to add.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, in fact, my answer was directed at Miss CHAN's concern that wage earners were dissatisfied with the deficits. I have stated in my reply what the MPFA can do.

MR WONG KWOK-HING (in Cantonese): *President, I observe that the Secretary's body language in answering the questions today, in being leaned slightly over the desk, it shows that he is very confident. Given this confidence of the Secretary, may I ask whether he is confident about setting up public trustees? If wage earners have lost their confidence in other investment funds and trustees, and if they do not understand, do not know how and do not have the time to examine the details, they may place their investment with the Government or public trustees established as promoted or led by the Government, and they may give it to the Secretary and let the Secretary make investment on their behalf? Does the Secretary have the confidence to answer my supplementary question?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I can say with confidence that at hearing the question, I think the establishment of public trustees is not an issue needed to be handled today. Since the high administrative cost is the major cause of the expensive cost of MPF, the inclusion of public trustees will not solve the problem. Therefore, at present, we have to examine ways to make overall improvement. We have to streamline the procedures and lower the administrative costs. As for investment options, we have to consider some new directions, which include expanding the functions and powers of the MPFA. Concerning public trustees, I think this is not a solution to the problem under discussion today. Yet, we surely will not rule out any proposal.

MR WONG KWOK-HING (in Cantonese): *The Secretary has not yet answered whether he will examine the proposal.*

PRESIDENT (in Cantonese): Secretary, will you examine the establishment of public trustees?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): We will not examine the proposal for the time being, but we will not rule out this possibility.

PRESIDENT (in Cantonese): The time limit for this question as prescribed by the House Rules has been exhausted. Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Management of Exchange Fund

7. **MR JAMES TIEN** (in Chinese): *President, according to the statistics published by the Hong Kong Monetary Authority (HKMA) in November this year, the total assets of the Exchange Fund (EF) increased from about HK\$570 billion in 1997 when the Hong Kong Special Administrative Region was established to*

about HK\$2,650 billion at the end of September 2012. In this connection, will the Government inform this Council:

- (a) of the total assets, investment return and rate of return, the amount apportioned to the Government, placements by fiscal reserves as well as accumulated surplus of the EF each year since 1997 (listed in table form); the sharing arrangements between the fiscal reserves and the EF for investment returns since 1997, as well as the details of the changes in such arrangements;*
- (b) as the statutory objective of the EF is to maintain the stability and integrity of Hong Kong's monetary and financial systems, whether the authorities have assessed if the existing level of the total assets of the EF is sufficient for fulfilling such statutory objective; if the assessment result is in the affirmative, of the details; if the assessment result is in the negative, the reasons for that;*
- (c) whether it knows if overseas governments or international financial institutions have set benchmarks for the appropriate levels of foreign exchange assets; if they have, of such benchmarks and how these benchmarks compare with those of Hong Kong; if it does not know, whether it will conduct such a study;*
- (d) whether it has assessed if it is feasible to maintain the total assets of the EF at the current level and transfer all the investment returns earned each year to the Treasury for the purposes of improving people's livelihood and development; if the assessment result is in the affirmative, how the authorities will implement this measure; if the assessment result is in the negative, of the reasons for that;*
- (e) whether it knows how the investment performance of the EF compares with those of similar funds managed by overseas governmental institutions; whether the authorities will make reference to the models adopted by overseas sovereign wealth funds in managing their reserve assets, so as to secure higher investment income on the premise of ensuring adequate liquidity for maintaining monetary and financial stability; and*

- (f) *given that there are comments that the prices of the United States (US) Treasuries will drop once the US interest rates increase, and the EF's assets may thus suffer investment losses, how the authorities tackle such risks?*

FINANCIAL SECRETARY (in Chinese): President, my reply is as follows:

- (a) The Government began to transfer its fiscal reserves to the EF in 1976. Prior to 1 April 1998, the fiscal reserves were placed as deposits with the EF and received interest according to market rates. During the period from 1 April 1998 to 31 March 2007, the fiscal reserves were paid an annual return as achieved by the entire EF in the year concerned.

In order to stabilize the investment return for the Government, starting from 1 April 2007, return of the fiscal reserves placed with the EF is calculated based on the average annual rate of return of the EF's Investment Portfolio for the past six years, or the average annual yield of three-year Exchange Fund Notes for the previous year subject to a minimum of 0%, whichever is higher.

The financial data of the EF is set out at Annex.

- (b) The total assets of the EF stood at HK\$2,612.3 billion at the end of October 2012. In October 2012, Hong Kong's Monetary Base amounted to HK\$1,113 billion, which is part of the EF's liabilities.

The size of the Monetary Base is directly affected by the flow of funds into and out of the Hong Kong dollar. Since the outbreak of the global financial crisis in 2008, inflow of funds into the Hong Kong dollar during Q4 2008 and 2009 amounted to over HK\$640 billion, resulting in a significant increase in the Monetary Base. However, should the current environment of abundant liquidity and exceptionally low interest rate begin to reverse, these funds might leave the Hong Kong market within a very short period of time, leading to a contraction in the Monetary Base and a reduction in the total assets of the EF.

The fiscal reserves of the HKSAR Government (approximately HK\$635 billion) and placements by other government funds and statutory bodies (approximately HK\$150 billion) make up another major portion of the EF's liabilities. These funds are only placements with the EF and the total assets of the EF will decrease alongside drawdowns by the Government and the relevant statutory bodies. The Accumulated Surplus, which is the EF's investment income accumulated over the years, is the only item that is not affected by changes in the components of EF's liabilities.

Although the EF assets have recorded significant increases in the past 10 years or so, we should note that the size of Hong Kong's banking system as well as the financial markets have also experienced rapid growth during the same period. For instance, the total assets of the banking system have doubled from HK\$6.7 trillion in 2000 to HK\$14.2 trillion while the capitalization of the stock market has also grown by several times from HK\$4.9 trillion to the current HK\$20.4 trillion. The larger the financial system is, the more sizable the EF would be required to support government measures to maintain stability of the banking and financial systems of Hong Kong in the event of a global financial crisis.

The EF must hold sufficient liquid foreign currency assets predominantly denominated in the US dollar that can be readily available and deployed when necessary. As a small and open economy, Hong Kong will not be immune to shocks in the global financial markets even though we have a robust financial system. Amid the current highly uncertain global macro financial and economic environment, it is difficult to predict whether or not and, if so, when the next global financial crisis will occur, and the amount of liquidity we will need when that happens. Therefore, the confidence of financial market participants, including the rating agencies, in the resilience of Hong Kong's financial system will be very much dependent on the EF.

- (c) Some international organizations have conducted researches on the appropriate level of official foreign exchange reserves and put forward some reference indicators, such as short-term debt, gross domestic products, imports and money supply. However, these

researches mainly targeted the developing and low-income countries and aimed at advising these countries to avoid imbalances in their international balance of payments. Therefore, the research outcomes may not be applicable to open economies.

In reality, the appropriate level of foreign currency reserves for an economy depends on various factors, including the objective as well as the costs and benefits of holding foreign currency reserves. There is no single benchmark or criterion to assess whether the foreign currency reserves of different economies are adequate or not. For small and open economies such as Hong Kong and Singapore, they are vulnerable to the large and rapid flows of international capital into and out of their economies. As a result, such economies will have to maintain a high level of foreign currency reserves so as to deal with unpredictable financial crisis and maintain market confidence.

- (d) The statutory objective of the EF is to maintain stability in the exchange value of the Hong Kong dollar as well as the stability of Hong Kong's financial system. Any proposal to reduce the total assets of the EF might send a wrong signal to the market. While Hong Kong has a robust financial system, its size is growing rapidly. Also considering the very volatile international financial markets and the highly uncertain global economic outlook, it is of the utmost importance to maintain the size and robustness of the EF in order to ensure monetary and financial stability in the event of external shocks.

The Government's fiscal reserves are placed with the EF and the investment return on fiscal reserves is part of government revenue and used for meeting the expenditure of various public services.

- (e) The main objective of the EF is to affect the exchange value of the Hong Kong dollar directly or indirectly. Reserve assets managed by the EF must be readily available to the monetary authority for maintaining monetary and financial stability. Therefore, the main investment objective of the EF is to maintain high liquidity and preserve capital. On the contrary, overseas funds managed by government institutions, in particular sovereign wealth funds, are not required to meet short-term liquidity needs. Their investment

objective is to maximize return over a relatively longer time horizon. Since the investment objectives and strategies of the EF are different from other investment funds, it is inappropriate to directly compare the investment performance of the EF with other government managed funds.

A more appropriate approach to assess the performance of the EF is to refer to its long-term investment performance in terms of its ability to maintain adequate liquidity, and to preserve its capital and purchasing power.

The EF began to diversify its investment in order to enhance medium- and long-term return in 2008 while ensuring adequate liquidity for maintaining monetary and financial stability. The new asset classes being invested include emerging market bonds and equities, private equity, real estate and Renminbi assets. As at the end of September 2012, total investment in these new asset classes amounted to HK\$131 billion while funds committed but not yet invested amounted to HK\$69.5 billion.

- (f) The EF consists of the Backing Portfolio, which provides backing to the Monetary Base, and the Investment Portfolio. Under the Currency Board arrangement, we are required to provide full backing to the Monetary Base with US dollar assets. The Backing Portfolio holds high quality and highly liquid US dollar-denominated debt instruments, which are predominantly US treasuries. Most of the debt instruments in the Backing Portfolio are of short-term maturity and their prices are relatively less affected by changes in market interest rates.

Although the Investment Portfolio has more diversified asset classes than the Backing Portfolio, it has to maintain a high level of security and liquidity so as to provide sufficient resources that will enable the EF to fulfil its statutory objective of maintaining monetary and financial stability. The HKMA will regularly review market developments and adjust our investment strategies to minimize market risk.

As mentioned earlier, in order to manage risks more effectively and increase medium- and long-term investment return, the HKMA has

begun to diversify part of the EF's assets into other asset classes in a cautious and incremental manner.

The HKMA will continue to closely monitor market developments and prudently manage the EF according to the investment objectives laid down by the Exchange Fund Advisory Committee.

Annex

Financial Data of the EF (1997 to end October 2012)

<i>Calendar Year</i>	<i>Total Assets of EF (HK\$ billion)</i>	<i>Placements by Fiscal Reserves (HK\$ billion)</i>	<i>Accumulated Surplus (HK\$ billion)</i>	<i>Investment Income (HK\$ billion)</i>	<i>Rate of Investment Return (%)</i>	<i>Payment to Fiscal Reserves⁽¹⁾ (HK\$ billion)</i>
1997	636.7	237.6	190.2	35.6	6.1	10.9
1998	912.3	424.6	242.2	93.8	12.1	30.4
1999	1,002.8	392.2	290.9	103.8	10.8	45.9
2000	1,023.4	417.2	307.1	45.1	4.8	18.9
2001	979.1	380.6	302.6	7.4	0.7	2.2
2002	955.1	301.7	327.2	47.0	5.1	15.9
2003	1,011.6	252.3	384.9	89.7	10.2	25.8
2004	1,061.9	280.1	423.4	56.7	5.7	14.6
2005	1,066.8	297.1	443.1	37.8	3.1	10.2
2006	1,176.4	324.5	507.7	103.8	9.5	29.1
2007	1,414.4	464.6	617.0	142.2	11.8	27.7
2008	1,560.3	531.4	480.5	(75.0)	(5.6)	46.4
2009	2,149.4	504.1	553.5	107.7	5.9	33.5
2010	2,345.0	592.3	591.5	79.4	3.6	33.8
2011	2,488.0	663.5	567.9	27.1	1.1	37.0
October 2012	2,612.3	635.2	607.7	83.0	N/A ⁽²⁾	31.5

Notes:

- (1) Prior to April 1998, placements by the fiscal reserves with the EF received interest at the prevailing market rate. From April 1998 onwards, the annual rate of return of the fiscal reserves was calculated according to the rate of investment return of the EF. Starting from April 2007, return of the fiscal reserves is calculated according to the average annual investment return of the EF's Investment Portfolio for the past six years.
- (2) Only rate of investment return for the whole year is provided.

Development Plan for Nansha New Area of Guangzhou

8. **MR NG LEUNG-SING** (in Chinese): *President, on 6 September this year, the State Council approved the Development Plan for Nansha New Area of Guangzhou (the Plan). Nansha New Area will be the sixth state-level new zone of China and the first one in Southern China. It is strategically positioned as "a zone to demonstrate comprehensive co-operation amongst Guangdong, Hong Kong and Macao". The Plan aims at aligning the business environment of Nansha New Area with international standards, as well as those of Hong Kong and Macao, on all fronts by 2025. Moreover, as disclosed by the Governor of Guangdong Province on 10 October, "a co-ordination mechanism led by the National Development and Reform Commission and joined by various parties, such as relevant ministries and commissions of the State Council, the Hong Kong Special Administrative Region, the Macao Special Administrative Region, Guangdong Province and Guangzhou City, will be established to enhance co-ordination and supervision in implementing the Plan". In this connection, will the Government inform this Council:*

- (a) whether it has assessed the impact of the development of Nansha New Area on the economy, finance and other aspects of Hong Kong; and*
- (b) whether the government departments concerned have started the preparatory work for Hong Kong's participation in the aforesaid co-ordination mechanism; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President,

- (a) The State Council endorsed The Plan for the Development of Nansha New District of Guangzhou (Nansha Development Plan) in September this year. Nansha Development Plan attaches great importance to deepening co-operation with Hong Kong and Macao on all fronts, and speeding up institutional innovation so as to build a business environment in line with Hong Kong and Macao in which international practices are adopted. This sets the macro

development direction for Nansha. The Nansha Development Plan also states that Nansha will strengthen key economic sectors such as commercial services, scientific and technological innovation, education and training, maritime logistics and high-end manufacturing; facilitate continuous enhancement of the international competitiveness of Hong Kong; achieve liberalization of trade in services with Hong Kong and Macao; and introduce measures to facilitate investment by small and medium enterprises from Hong Kong and Macao. We believe, with the implementation of these development directions and policies and if Hong Kong enterprises could seize upon the opportunities arising therefrom, Nansha, as a whole, could offer wide expansion scope for Hong Kong business in the Mainland. Since specific policies and detailed arrangement in pushing forward the development of Nansha have yet to be formulated by the relevant authorities, we are not able to make any substantive assessment at this stage on how development of Nansha may impact on the economic, financial or other aspects of Hong Kong.

- (b) HKSARG has been maintaining close liaison with the Guangzhou Government. The two sides have established the Hong Kong/Guangzhou Co-operation Working Group to serve as the communication platform on pushing forward the development of Nansha. The related bureaux of HKSARG have been watching closely the progress of the development of Nansha and conveying views of the industries, collected through meetings, seminars and written submissions, to the relevant authorities. These efforts shall lay a foundation for HKSARG's active participation in the co-ordination mechanism to be led by the National Development and Reform Commission.

Control on Bedbugs

9. **DR JOSEPH LEE** (in Chinese): *President, it has been reported recently by the media that the problem of bed bugs in Hong Kong has become increasingly serious, and bedbugs are found in public places, guesthouses and residential flats. The problem is particularly serious in districts where second class*

guesthouses and old public rental housing (PRH) estates are concentrated. In this connection, will the Government inform this Council:

- (a) whether legislation is currently in place to require operators of guesthouses to ensure good hygiene standard in guesthouses so that their guests will not be bitten by bedbugs; if so, of the details; if not, whether relevant legislation will be formulated;*
- (b) whether the Government, facing the increasingly serious problem of bedbugs, will eradicate bedbugs in public places and PRH estates which are infested with bedbugs, so as to eliminate such a nuisance to the public; if it will, of the details; if not, the reasons for that; and*
- (c) whether it will establish a mechanism for monitoring the spread and distribution of bedbug infestation in the whole territory, assessing the risk of disease transmission by bedbugs and implementing measures to prevent and control bedbug infestation; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, bedbugs are generally not considered as disease vectors. For effective control of bedbug infestation, members of the public are advised to take the following measures: maintaining a clean domestic environment; cleaning premises regularly; washing bedding and clothing thoroughly; making sure that second-hand wooden furniture is free from bedbugs before using it; replacing worn-out wallpapers and sealing cracks/crevices on walls and the floor promptly, and so on.

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

- (a) Under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), premises intended for use as a hotel or guesthouse shall comply with the requirements on sanitary fitments and so on, under the Buildings Ordinance (Cap. 123). In June 2008, the Centre for Health Protection, the Department of Health issued a set of guidelines on "Infection Control and Prevention in the Hotel Industry", providing practical information for those who work in hotels on infection control and measures to prevent the spreading of

communicable diseases. All hotel employees have the responsibility to acquaint themselves with the guidelines and follow the recommendations laid down therein in their day-to-day work to reduce the risk of spreading communicable diseases.

- (b) A good number of private companies that provide pest control services are available in the market. Members of the public who have a bedbug problem at home may seek assistance from these companies direct. In general, upon receipt of complaints/enquiries, the Food and Environmental Hygiene Department (FEHD) will send its staff to conduct on-site inspections and provide the relevant parties with technical advice on bedbug control measures and health education. Information on bedbug control has been uploaded onto the FEHD's website and published in the form of a leaflet⁽¹⁾ to help the public better understand the bedbug problem. Where necessary, the FEHD will conduct pest control work in public places.
- (c) According to the Centers for Disease Control and Prevention in the United States, there is at present no known evidence which shows that bedbugs spread diseases. Such being the case, the FEHD has not at present established any monitoring mechanism for bedbug infestation. The pest control work currently being carried out by the FEHD on a sustained basis is targeted at the control of rodents, mosquitoes and other arthropod pests which pose a threat to human health, in order to ensure the elimination of disease vectors.

For mosquito control, the FEHD has put in place an enhanced dengue vector surveillance programme since 2003. The information thus collected is used to make timely adjustments to our mosquito control strategies and measures. Moreover, the FEHD organizes annual anti-mosquito campaigns on a territory-wide basis to heighten public awareness of the potential risk posed by mosquito-borne diseases, and to encourage community participation and promote concerted efforts on the part of government departments in anti-mosquito work.

(1) Please refer to <<http://www.fehd.gov.hk/english/safefood/risk-pest-arthropod.html>> for details.

For rodent prevention and control, the FEHD takes a number of measures in districts with relatively high rodent infestation rates. The measures include eliminating and trapping rats in rear lanes, filling rat holes, stepping up street cleansing and encouraging active participation of the public in anti-rodent work, as well as strengthening publicity and education programmes in rodent prevention and control.

The Government is conscious of the need to keep its methodology in pest control under review, in the interest of ensuring the effectiveness and efficacy of our measures in combating disease vectors.

HOS Secondary Market

10. **MR ABRAHAM SHEK** (in Chinese): *President, the Chief Executive announced in July this year that, from early 2013 onwards and before the new Home Ownership Scheme (HOS) is launched, 5 000 eligible "White Form (WF)" applicants for HOS each year would be allowed to purchase HOS flats on the HOS Secondary Market (Secondary Market) without paying premium. It has been reported that since the announcement of this measure, the prices of HOS flats on the Secondary Market have risen continuously. For example, in August this year, an HOS flat of 21 years old in Tsing Yi was sold after payment of premium at a price almost 20% higher than that of a private residential flat of only nine years old in the same district. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed why the prices of HOS flats on the Secondary Market have risen continuously and even surpassed the prices of private residential flats on the Secondary Market in the same district;*
- (b) *whether it has assessed if the current price levels of HOS flats on the Secondary Market, both for those with premium unpaid and those paid, are beyond the affordability of the public; if the assessment result is in the affirmative, how the Government upholds the policy objective of HOS as a form of subsidized housing; if the assessment*

result is in the negative, whether it has assessed at which level the prices of HOS flats on the Secondary Market would be beyond the affordability of the public; and

- (c) *whether it will conduct a comprehensive review of the current measures for revitalizing the Secondary Market, including the consideration of requiring HOS flat owners to sell their flats only to sitting or prospective tenants of public housing, so as to uphold the policy objective of HOS being a form of subsidized housing and different from private residential flats, which may be transacted freely; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, we acknowledge the aspirations for home ownership in the community, and understand that some people need HOS flats as their first step towards home ownership. In the past few years, different sectors of the community have also suggested to allow those with WF status to purchase HOS flats with premium not yet paid to address their home ownership needs.

All along, tenants of public rental housing (PRH) can purchase new HOS flats put up for sale with a "Green Form (GF)" status without being subject to income limits, or HOS flats with premium not yet paid on the Secondary Market. However, the non-PRH tenants who meet the income and asset criteria can only purchase new HOS flats put up for sale with a "WF" status.

Therefore, before the first batch of new HOS flats are completed in 2016-2017, we will allow 5 000 "WF" applicants each year to purchase HOS flats with premium not yet paid (the interim scheme). This can help address the home ownership needs of those who are eligible and also facilitate the turnover of HOS flats in the interim, thereby revitalizing the Secondary Market.

The consolidated reply to the three-part question is as follows:

We have been monitoring the price changes in the property market closely, including the Secondary Market. We note that despite the global and local economic slowdown, overall property prices have increased persistently, including the transaction prices of second-hand HOS flats. While we appreciate

the community's concern about the increase in prices of second-hand HOS flats with premium not yet paid, it should be noted that changes in property prices hinge on many factors, such as land supply, volume of transactions, situation of mortgage lending, the level of liquidity, interest rates, people's expectation of the future market, and so on. Likewise, changes in the prices of HOS flats with premium not yet paid on the Secondary Market are attributable to various factors, but not any single individual reason.

Under the HOS Secondary Market Scheme (SMS), eligible persons (that is, those with "GF" status, and those with "WF" status who are allocated quota under the interim scheme in future) may liaise with the owners of flats with premium not yet paid under the Secondary Market (including more than 250 000 HOS flats, 120 000 "Tenant Purchase Scheme" flats and 9 000 "Flat-for-Sale Scheme" flats under the Housing Society (HS)) on their own for purchasing those flats, and determine the transaction prices according to the market situation. As for those HOS flats with premium paid, they are regarded as private sector flats. We do not think that there is a need to set an affordable price level for second-hand HOS flats. Nevertheless, as in the past practice, the affordability of the "WF" applicants to home ownership would be reflected in the formula where the income and asset limits are set.

On the suggestion to restrict HOS flat owners to sell their flats to existing or prospective PRH tenants only and not on the open market upon paying the premium, in accordance with the Housing Ordinance, upon expiration of the alienation restriction period or if the Housing Authority (HA) does not accept the HOS flat owner's offer to sell back (that is, the "buyback") within the alienation restriction period, the owners can sell their flats on the open market after paying premium. Therefore, in accordance with the Housing Ordinance, there are no grounds for the HA to restrict the owners from selling their HOS flats with premium paid on the open market.

That said, to address the community's concerns that the interim scheme may lead to speculative activities on the Secondary Market which may affect the prices of HOS flats with premium not yet paid, we will introduce resale restrictions for "WF" buyers under the SMS. 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 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 above resale restrictions for "WF" buyers on the Secondary Market are made with reference to the resale restrictions currently applicable to HOS flats. This arrangement has been widely known to the public, easy to understand and is acceptable. Moreover, the Administration has put in place other measures (for example, the Special Stamp Duty) to curb speculation and should have addressed such concerns.

We understand that some people have been pressing home ownership needs. Therefore, in addition to the interim scheme of extending the Secondary Market to a small number of "WF" buyers, the Government has proactively commenced the preparatory work for the first batch of new HOS projects. The Administration has set a planning objective to provide some 17 000 new HOS flats over the four years from 2016-2017 onwards. We expect that the pre-sale of the first batch of new HOS flats, which will be completed in 2016-2017, can be launched in 2014-2015.

At the same time, the HA will also release all of the remaining 832 Surplus HOS flats for sale early next year. Also, the pre-sale of the 1 000 flats of the Tsing Luk Street project being developed by the HS, which was originally under the "My Home Purchase Plan", will be launched in end 2012.

Moreover, the Government will assess the demand for HOS in future, and set the relevant supply target under the "Long Term Housing Strategy" review.

Shortage of Cross-boundary Container Truck Drivers for Logistics Industry

11. **MR FRANKIE YICK** (in Chinese): *President, some members of the logistics industry have reflected to me that, in recent years, the industry has encountered difficulties in recruiting young people to work as container truck drivers. Even though some trade associations are willing to offer free training to drivers and assist them in taking the container truck driving licence tests on the Mainland and in Hong Kong, few people are attracted to join the trade. Coupled with the fact that many in-service drivers are retiring one after another, there is a shortage of container truck drivers. Such a shortage of drivers has*

been more acute since the implementation of the Statutory Minimum Wage, as some drivers have changed jobs to work in industries offering more stable income. It has been reported that the average age of the in-service drivers is over 50 and the Mainland authorities have stipulated that driving licences of heavy vehicle drivers aged over 60 will not be renewed. As a result, if the shortage of drivers cannot be alleviated within the short term, the development of Hong Kong's logistics industry will be seriously stifled, resulting in a gradual shift of container freight businesses to nearby Mainland ports (such as Shenzhen's Yantian and Shekou, and so on). Besides, the completion and commissioning of the Hong Kong-Zhuhai-Macao Bridge and the new boundary control point at Liantang/Heung Yuen Wai in the future will further extend the cargo hinterland, but Hong Kong may not be able to benefit from this development due to the shortage of cross-boundary container truck drivers. In this connection, will the Government inform this Council:

- (a) whether the authorities have conducted any study in the past three years on the manpower demand of the logistics industry; if so, of the details of the study, including the manpower shortage situation of the logistics industry and the assessment of the manpower demand in the coming five years, as well as the measures for increasing the number of container truck drivers to meet the needs of the logistics industry; if not, whether the authorities will consider conducting the study in order to formulate a long-term strategy for the development of manpower resources for the logistics industry;*
- (b) of the number of people enrolled in the courses provided under the Skills Upgrading Scheme (SUS) in the past three years for the in-service cross-boundary container truck drivers; whether it will consider opening up such courses to admit people not belonging to the industry, so as to attract more people to change their jobs to work as cross-boundary container truck drivers; if it will, of the details; if not, the reasons for that;*
- (c) to alleviate the shortage of cross-boundary container truck drivers, whether the authorities will request the Mainland authorities to relax the age threshold of 60 for renewal of heavy vehicle driving licences; if they will, of the details and progress; if not, the reasons for that; and*

- (d) *having regard to the increasing demand by the logistics industry in Hong Kong for cross-boundary container truck drivers, of the short, medium and long-term measures that the authorities will take to tackle the manpower shortage problem of the logistics industry; whether the authorities will reconsider permitting the logistics industry to import Mainland drivers through the Supplementary Labour Scheme to alleviate the manpower shortage problem; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, taking into account the comments of the Labour and Welfare Bureau, the consolidated reply to the various parts of Mr Frankie YICK's question is as follows:

- (a) and (d)

Since 1982, the Transport Logistics Training Board under the Vocational Training Council has been conducting a survey and releasing a report every two years on the manpower situation and training needs of the transport logistics industry. The survey collects information from sampled companies in the industry through questionnaires. It covers 10 major areas related to the transport logistics industry, including trucking and container haulage, air freight transport, sea freight transport and forwarding agents, and so on.

According to the 2010 Manpower Survey Report, having regard to staff wastage and growth needs, it was estimated that the transport logistics industry needed to recruit some 4 000 new employees every year, of whom about 600 should have an education level of post-secondary⁽¹⁾ or above. The other posts may be filled by people with an education level of Form Five or below. The report pointed out that the number of fresh graduates in logistics-related disciplines with a post-secondary academic qualification is close to the number

(1) Post secondary includes sub-degree (higher diploma, associate degree, diploma, higher certificate) and advanced level.

of new staff required. However, whether these graduates with post-secondary qualifications or above, as well as the graduates with an education attainment of senior-secondary or below, would be willing to join the transport logistics industry in the end would depend on the employment conditions of other jobs in the market and their personal preference. The 2012 report on Manpower Survey is expected to be released early next year. We will keep in view the findings of the report and take follow-up actions as appropriate.

As for the demand for cross-boundary container truck drivers, according to the record of the Transport Department (TD), over 42 000 people hold a valid driving licence for driving container trucks in Hong Kong. However, the current number of registered cross-boundary container truck drivers stands at about 4 700⁽²⁾. It is believed that the difference is due to the personal choice of drivers and the better working and employment conditions offered by other industries. In order to encourage more people to join the cross-boundary container freight industry, the Administration will continue to closely liaise with the Mainland authorities so as to facilitate application of Hong Kong drivers for Mainland container truck driving licences. For example, the Shenzhen Vehicle Administration Office has set up a dedicated counter in September last year to handle applications for driving licences by Hong Kong drivers. It has also formulated guidelines, points-to-note and procedures on the application for driving licence by Hong Kong drivers for the reference of interested persons. Besides, employers in the industry may make use of the free service provided by the Labour Department to recruit staff and fill the vacancies of cross-boundary container truck drivers.

The TD will continue to maintain liaison with the industry and keep in view the industry's operating conditions as well as the demand for cross-boundary container truck drivers. It will review the industry's training needs in consultation with the trade, and liaise with the

(2) According to the information provided by the Licensing Division of the TD, as at 22 November 2012, there were a total of 4 650 drivers holding a valid driving licence for articulated vehicles and a relevant Closed Road Permit issued by the TD.

Employees Retraining Board (ERB) and relevant organizations on related matters so that ERB may offer relevant courses as appropriate to support the industry's long-term development.

As regards the proposal to import Mainland drivers, since importing Mainland drivers may affect the local community and local drivers' livelihood, and as described above there are currently more than 40 000 holders with a valid driving licence for container trucks, the Administration currently has no plan to import Mainland drivers through the Supplementary Labour Scheme.

- (b) With the exhaustion of the funding of the SUS, the ERB has fully taken over the former SUS courses with market demand by launching the Skills Upgrading Scheme Plus (SUS Plus) since 1 April 2011. In 2012-2013, 17 courses related to the cross-boundary container freight industry and related industries are offered under the SUS Plus. Not only in-service cross-boundary container truck drivers can enhance their employability and competitiveness by undertaking the courses, the ERB has also offered six of these courses to non-trade practitioners to help them join the industry. Between 2010-2011 and 2012-2013 (as at October 2012), a total of 421 persons have enrolled in the related courses offered under the original SUS or the ERB's SUS Plus.
- (c) As stipulated by Mainland laws, people over the age of 60 are not allowed to drive container trucks. In response to the request of the industry, we have earlier on written to the Guangdong authorities, requesting them to consider relaxing the age limit of Hong Kong cross-boundary drivers applying for a Mainland driving licence to 65. The authorities replied that the requirement was stipulated under the Mainland national laws and could not be relaxed.

Restrictions on Chairperson of EOC and Commissioner for Personal Data Holding Other Remunerated Offices

12. **MR WONG YUK-MAN** (in Chinese): *President, at present, the Chairperson of the Equal Opportunities Commission (EOC) serves as the*

Convenor of the Non-official Members of the Executive Council concurrently. There are comments that EOC's previous engagement in lawsuits with the Government in discharging its statutory duties reflects that there is a potential role conflict between the two aforesaid offices and it is therefore inappropriate for the two offices to be taken up by the same person. On the other hand, section 63(5) of the Sex Discrimination Ordinance (Cap. 480) stipulates that EOC's "Chairperson shall be appointed on a full-time basis", while section 6 of the Personal Data (Privacy) Ordinance (Cap. 486) stipulates that "The person appointed to be the (Privacy) Commissioner (for Personal Data) shall not, without the specific approval of the Chief Executive, hold any office of profit other than his office as Commissioner". In this connection, will the Government inform this Council:

- (a) of the justifications for enacting different legal requirements regarding the holding of other remunerated offices by the EOC Chairperson and the Privacy Commissioner for Personal Data; and*
- (b) whether it will amend the relevant provisions in the Sex Discrimination Ordinance to align the restriction on the EOC Chairperson holding other remunerated offices with that for the Privacy Commissioner for Personal Data; if it will, of the legislative timetable; if not, the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, our consolidated reply to different parts of the question is as follows:

It is stipulated in section 63(5) and (6) of the Sex Discrimination Ordinance (Cap. 480) that "the Chairperson (of the EOC) shall be appointed on a full-time basis" and "the relevant provisions of Schedule 6 shall have effect with respect to the Commission and its members". Paragraph 1(2) of Schedule 6 to that Ordinance further stipulates that "the Chairperson shall not, without the specific approval of the Chief Executive, hold any office of profit other than his office as Chairperson; or engage in any occupation for reward outside the functions of his office".

It is stipulated in section 6 of the Personal Data (Privacy) Ordinance (Cap. 486) that "the person appointed to be the (Privacy) Commissioner (for

Personal Data) shall not, without the specific approval of the Chief Executive, hold any office of profit other than his office as Commissioner; or engage in any occupation for reward outside the functions of his office".

The statutory restriction under the Sex Discrimination Ordinance in respect of the holding of any office of profit other than the office as Chairperson of the EOC is, in substance, no different from that applicable to the Privacy Commissioner for Personal Data under the Personal Data (Privacy) Ordinance.

Handling of Unauthorized Building Works

13. **MR RONNY TONG** (in Chinese): *President, the media have uncovered one after another cases of unauthorized building works (UBW) being found in the residences of the Chief Executive and certain politically appointed officials. On the 23rd of last month, the Chief Executive released a written statement to give an account of the problem of the UBW in his mansion, and disclosed that he had found in October last year that the laundry room, part of the storeroom and the servant's room on the lower ground floor of House 4 had been expanded before he purchased the property, and the extension area was about 200 sq ft. He demolished the extension parts in November last year and sealed it with a brick wall. Separately, in July last year, the media uncovered that there were UBW in a residential unit owned by the Secretary for Commerce and Economic Development at MacDonnell Road. It has been reported recently that the Secretary for Commerce and Economic Development had obtained the approval from the Buildings Department (BD) for retaining part of the UBW and converting it into a balcony under a "remedial proposal" without the requirement to demolish the UBW and restore the unit. In this connection, will the Government inform this Council:*

- (a) *whether the BD has adopted an enforcement policy of "remove first and submit building plans later" on UBW (that is, the owners concerned are required to first demolish the UBW and restore the unit before they may submit applications and plans to the BD for alteration works) applicable to all; if so, why the BD has handled the UBW in the properties owned by the Chief Executive and the Secretary for Commerce and Economic Development in a way different from other UBW; if there is no such enforcement policy, whether the BD should, in accordance with the prevailing policy,*

require the Chief Executive to first demolish the unauthorized area and restore the place before applying to seal the storeroom with a brick wall; whether the BD will assess if the Chief Executive has contravened the relevant requirements of the Buildings Ordinance (Cap. 123) (BO) by failing to handle the unauthorized area in accordance with the procedure;

- (b) whether the staff of the BD had suspected in the site inspection of the Chief Executive's mansion on 22 June this year that there might be an extension part behind the brick wall of the storeroom on the lower ground floor of House 4; if they had, why they have not taken any follow-up actions; if not, of the reasons for that;*
- (c) given that it has been reported that the Secretary for Commerce and Economic Development has proposed a "remedial proposal" in respect of the UBW in his unit at MacDonnell Road, under which he may retain the UBW and is not required to comply with the requirement of "remove first and submit building plans later", whether such kind of "remedial proposals" is applicable to all people; if so, of the criteria adopted for approving the "remedial proposals", including the types of UBW to which the criteria apply; whether the BD has made public the details of the criteria; if not, of the reasons for that; if the "remedial proposals" are not applicable to all people, the reasons for that;*
- (d) whether the BD will issue a removal order to an owner before he submits a "remedial proposal" in respect of UBW; if not, of the reasons for that; if it will, in cases where the legitimate floor area of an unit has increased after the completion of the alteration works under the "remedial proposal" approved by the BD, whether the removal order issued is still valid; if it is invalid, of the reasons for that; and*
- (e) whether the BD had already issued a removal order to the Secretary for Commerce and Economic Development before he submitted to the BD the "remedial proposal" in respect of the UBW in his unit; if so, of the progress in enforcing the removal order and the follow-up actions taken by the BD; of the legitimate floor area added to that unit upon the completion of works under the "remedial proposal"*

submitted by the Secretary for Commerce and Economic Development, and whether the removal order is still valid; if not, of the reasons for that?

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Government attaches great importance to building safety. In handling UBW, the BD has been following the principle of acting in accordance with the law and being impartial to all to take appropriate actions pursuant to the BO and the prevailing enforcement policy.

Under the established procedures of the BD, if there are confirmed actionable UBW after inspection, and the UBW have no imminent danger and the case does not involve emergency, the BD will issue an advisory letter to the owner, advising him to rectify the irregularities as soon as possible. If the owner is not able to commence the rectification works within the specified period, the BD will issue a statutory order requiring the owner to carry out the necessary works to rectify the situation, and register the order in the Land Registry (commonly known as "imposing an encumbrance"). The BD will consider instigating prosecution actions against owners who fail to comply with the statutory orders. Regarding the non-actionable UBW, the BD will, depending on the situation, serve advisory letters or warning notices requesting the owners to remove the UBW voluntarily.

There are different requirements on rectification works under the BO. Some works are exempted works which may be carried out without the need for making application to the BD. Some works fall under the scope of the Minor Works Control System; depending on the type of works, reports may be submitted to the BD after the works have been carried out. Some works require the prior approval from the BD before the works are carried out. In gist, the carrying out of different rectification works is subject to different requirements.

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

(a) and (b)

As mentioned above, the BD has been following the principle of acting in accordance with the law and being impartial to all in taking appropriate actions pursuant to the BO and the prevailing

enforcement policy. We have also reiterated that the BD will take appropriate enforcement actions in an impartial manner. The BD will not make any special arrangements for enforcement actions because of the identity of the owner. In gist, the BD will not be particularly stringent or lenient in its enforcement actions because the owner is a senior government official or celebrity.

In respect of the floor space on the lower ground floor of House 4 at No. 4 Peel Rise as mentioned in the question, the BD conducted on-site inspection on 26 June this year. At that time, the BD did not identify any "unauthorized servant's room" as reported by the media or new UBW, but noticed that the position of part of the external wall of the original store room did not match with that shown on the original approved plan. In accordance with the established practice, the BD issued a letter to the owner and the Authorized Person (AP) on 27 June, requesting them to provide information on the construction and purpose of the wall concerned. The BD had thereafter issued three written reminders to the AP urging him to provide the information. On 23 November, the owner issued a statement, which included information on the floor space on the lower ground floor of House 4. The BD conducted on-site inspection on the first working day that followed (that is, 26 November), and immediately requested the AP appointed by the owner to provide information and arrange for the opening up of that external wall as soon as possible for detailed inspection. During the BD's subsequent site inspection on 29 November, the external wall had been opened up with an entrance of a size similar to that of a door, and the BD staff identified that there was a floor space behind the external wall. After the inspection, the BD had confirmed that the floor space concerned was an actionable UBW and issued an advisory letter to the owner on 3 December, advising him to remove the UBW as soon as possible. The BD staff will continue to analyse and assess the information obtained in the inspection and follow up with the AP appointed by the owner with a view to determining the necessary enforcement actions.

(c), (d) and (e)

Regarding the UBW case in the property at 4/F, 44D MacDonnell Road as mentioned in the question, according to the inspection by

the BD staff, the following UBW had been carried out in the premises:

- (i) erection of a balcony enclosed by window wall and metal railing from the external wall of the living room; and
- (ii) extension enclosed by solid wall and window wall from the external wall of bedroom.

After the BD had issued an advisory letter to the owner in August 2011 in accordance with the established practice, the owner appointed an AP to follow up the case. In April 2012, the BD accepted the remedial proposal submitted by the AP for carrying out the following remedial works:

- (i) removing the existing window wall and metal railing of the extended balcony, erecting a new glass partition wall with door at the originally approved position of the external wall of the living room, and erecting a new glass balustrade at the outer edge of the balcony; and
- (ii) removing the existing window wall of the extension at the bedroom and erecting a new window wall with the function of protective barrier.

According to the information provided by the AP, extended balconies of the same design had been constructed at the position of the living room of the flat units above and below the subject premises, with planters attached to the parapet walls of these balconies; but there was no planter at the extended balcony of the subject premises on 4/F at No. 44D. As such, the remedial proposal submitted by the AP did not involve any alteration of a so-called planter into a balcony or part of the living room.

The BD will check the approved plans of the buildings in handling UBW cases. If the works are not shown on the approved plans, and such works are not exempted works or designated minor works items carried out under the simplified requirements of the Minor Works Control System, they will be regarded as UBW. Under the BO, the

BD has no power to approve UBW that have been completed. Owners intending to carry out the works after completion of the removal works may make application to the BD in accordance with the BO. As the case mentioned in the question involves special circumstances, the BD has been taking follow-up actions in accordance with the established practice for handling such similar circumstances as mentioned below.

When implementing large-scale operations (LSOs) on the removal of UBW in the past, the BD came across cases where the owners requested it not to take enforcement actions against UBW. The structures involved in these cases were already in existence when the owners acquired the premises as first-hand owners from the developer, and such structures were not shown on the approved plans. The owners had not carried out any addition and alteration works after the issuance of occupation permit. Examples of these structures include cantilevered projecting structures such as balconies or planters attached to the external walls of buildings or structures situated at such inconspicuous locations as light wells and re-entrances of buildings. In a number of LSOs on the removal of UBW, there were also cases of owners or owners' corporations lodging appeals against the removal orders issued by the BD, involving structures attached to the external walls of the buildings, and such structures were not shown on the approved plans. The ground of the appellants' appeals was that these structures were already in existence when they acquired the premises from the developer. In a judicial review case involving the BO last year, the Court held that the Appeal Tribunal (Buildings) should not dismiss the appeals by the appellants without first determining whether the balconies concerned were carried out at the same time as the building was erected.

In the light of the above considerations, the BD has reviewed similar situations and formulated a practice for handling this kind of cases. According to the prevailing practice, if there is information showing that the UBW were constructed by the developer or contractor for the whole building before occupation of the building, the BD will consider whether to take enforcement actions against the UBW having regard to the actual circumstances of the UBW in the

building, background information on the building and the prevailing UBW enforcement policy. While the BD may withhold enforcement actions against the UBW after assessing the actual circumstances, the structures are still regarded as UBW. The BD will issue statutory warning notices under the BO and register the notices against the ownership records in the Land Registry. Besides, the BD will record the UBW concerned and may, where necessary owing to changes in the circumstances, consider taking enforcement actions requiring removal of the UBW.

In respect of the UBW case in the property at 4/F, 44D MacDonnell Road, the BD will continue to follow up on the extended balcony and extension of the bedroom in accordance with the BO and the prevailing UBW enforcement policy, as well as the established practice for handling similar situations as mentioned above.

Safety of Window Panes

14. **MS CLAUDIA MO** (in Chinese): *President, it has been reported that in September this year, a huge window pane of an upper floor unit at The Arch, a luxury residential project in West Kowloon, cracked suddenly, and the glass shards falling from height injured a passer-by. According to the report, a total of over 30 pieces of window panes had fallen from units in that estate since 2007, posing threat to the safety of the residents in the area and passers-by, and such situation has aroused concerns. It has also been reported that the safety standards in respect of window panes formulated by the Buildings Department (BD) are far lower than those in certain European countries. Moreover, the fact that incidents of window panes of residential units cracking and falling occur from time to time reflects that the problem of "glass cancer" is serious, which poses threat to public safety. In this connection, will the Government inform this Council:*

- (a) *of the number of reports received by the authorities in the past 10 years on incidents of cracking or falling of window panes of major housing estates or buildings aged below 10 years and the resultant casualties, with a breakdown by age of the building and cause of the incidents; whether they have taken follow-up actions and instituted*

prosecutions; if they have, of the number of prosecutions instituted and other details; if not, the reasons for that;

- (b) whether it has reviewed the adequacy of the number of buildings selected each year for mandatory inspection of windows under the existing Mandatory Window Inspection Scheme (MWIS); as incidents involving the cracking and falling of window panes of newly built buildings have occurred from time to time, whether it will consider including private buildings aged below 10 years in the MWIS; and*
- (c) whether it has any plan to step up regulation of the design and construction of glass curtain walls and enact legislation stipulating that the contractors concerned will be held liable in case of accidents; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Buildings Ordinance (BO) aims to regulate the planning, design and construction of buildings and associated works on private land and, for this purpose, to prescribe building standards regarding safety, sanitation and the environment. In accordance with the provisions of the BO, any person intending to carry out building works is required to appoint an Authorized Person (AP) and, where necessary, a registered structural engineer (RSE) to prepare and submit building plans for approval by the BD, unless the works fall within the scope of designated minor works that can be carried out under the simplified requirements of the Minor Works Control System or such works are exempted works. The person must also appoint a registered contractor to carry out the works in accordance with the approved plans. After the building plans have been approved, the AP must obtain written consent from the BD before commencement of works. The material, design and construction of windows and curtain walls are subject to the control of the Building (Construction) Regulations (B(C)R). The BD has also formulated relevant Practice Notes on "Curtain Wall, Window and Window Wall Systems" and "Aluminium Windows" to provide clear design and construction guidelines for industry practitioners.

The standards on quality control of glass (such as tempered glass) in Hong Kong are generally in line with the European and international standards. In its

Practice Note on "Curtain Wall, Window and Window Wall Systems", the BD requires the heat soak process conforming to BS EN 14179-1:2005 should be carried out on all tempered glass to reduce the risk of spontaneous breakage induced by nickel sulphide inclusions in tempered glass. The requirement complies with the European Standard EN 14179-1:2005. In fact, the BD always makes reference to relevant international standards and experience in setting safety standards in private buildings.

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

- (a) Regarding private buildings, the BD has only started maintaining records on reports relating to window falling off with the frame from buildings since October 2004. There is however no statistics on cases involving only the breakage of window pane, or analysis on the type or age of buildings involved. According to the relevant records, as at 30 September 2012, a total of 233 cases of window falling off with the frame from private buildings had been reported. The said cases resulted in one death and 22 injuries. The BD does not have the other statistical information on these cases as required in the question.

In addition, according to the records of the Housing Department, there were seven cases of falling windows reported for Home Ownership Scheme courts in the past 10 years. The age of the courts involved ranged from about 15 years to 25 years.

- (b) The BD fully implemented the Mandatory Building Inspection Scheme and the MWIS on 30 June 2012 to tackle the problem of building neglect at source. The MWIS covers all private buildings aged 10 years or above, except domestic buildings not exceeding three storeys in height. Building owners are required, within a specified timeframe, to appoint a qualified person (QP) to carry out a prescribed inspection and to appoint a registered contractor to carry out a prescribed repair found necessary of the windows once every five years. The prescribed repair must be carried out under the supervision of a QP. Each year, the BD will arrange to select a total of 5 800 buildings aged 10 years or above for the MWIS. The target buildings selected each year will include a mix of buildings in

different conditions and age profiles in different districts. The BD is now issuing statutory notices to the first quarterly batch of target buildings selected for the MWIS.

In formulating the requirements of the MWIS, the Government conducted a two-stage public consultation in 2003 and 2005. The target groups included various sectors of the community and major stakeholders (including owners, professional bodies and the building industry). In respect of the MWIS, the community consensus obtained in the consultation was that the scheme should apply to private buildings aged 10 years or above, and that the inspection cycle should be five years. As the MWIS is now at its initial stage of implementation, we have no plan to revise the building age requirement under the scheme at this moment; but we will keep the effectiveness of the scheme under review having regard to the experience gained. We also encourage owners to carry out inspection and repair for their buildings voluntarily where necessary to ensure good maintenance and safety conditions of buildings. Besides, the BD has through publicity educated the public on proper usage of windows and the importance of regular maintenance and repair.

- (c) As mentioned above, in accordance with the BO, except for minor works or exempted works, any person intending to carry out building works is required to appoint an AP and/or a RSE to prepare and submit building plans to the BD for approval, and to appoint a registered contractor to carry out the building works according to the approved plans. Prior consent from the BD is also required before commencement of works. Moreover, to ensure that any building works in progress are in compliance with the law, the BD staff will monitor and inspect active work sites regularly. APs, RSEs and registered contractors all have the statutory obligation to co-ordinate, supervise and carry out the building works, and are required to submit test reports to ensure that the quality of their works complies with the BO. Before issuing the occupation permits, the BD will conduct final checks on the test reports on construction materials or components as well as the completed works.

APs, RSEs and registered contractors should ensure that their works in terms of material, design and construction of windows and curtain walls comply with the B(C)R and the safety standards specified in the two Practice Notes issued by the BD as mentioned above. According to the B(C)R, all materials used in any building works or street works shall be of a suitable nature and quality for the purposes for which they are used; adequately mixed or prepared; and applied, used or fixed so as to perform adequately the functions for which they are designed. These requirements are applicable to windows and curtain walls installed in buildings. The Practice Notes set out in detail such relevant requirements and standards as material, design, installation as well as testing of windows and curtain walls. Besides, registered contractors are required under the Practice Notes to have experienced and skilled supervisors and workers, and to put in place suitable quality assurance procedures to ensure the proper installation of the windows and curtain walls.

Any person or contractor who contravenes the above requirements may breach certain provisions of the BO, such as sections 40(1AA) and 40(2A)(a). According to section 40(1AA) of the BO, any person who knowingly contravenes section 14(1) (that is, the requirement of obtaining the prior approval of plans and consent for commencement of works from the BD) shall be liable on conviction to a fine of \$400,000 and imprisonment for two years; and to a fine of \$20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. Besides, any person who contravenes section 40(2A)(a) of the BO shall be liable on conviction, in the case of building works (other than minor works), to a fine of \$1,000,000 and imprisonment for three years; or in the case of a prescribed inspection in respect of a window in a building or minor works, to a fine of \$500,000 and imprisonment for 18 months.

The BD keeps the Practice Notes under regular review to seek improvement. The abovementioned Practice Notes on "Curtain Wall, Window and Window Wall Systems" and "Aluminium Windows" were last revised in May 2012 and March 2006 respectively. To meet the evolving needs of the community, the

BD just commissioned a consultancy study in November this year to review the existing requirements and standards on the material, design and construction of glass, and windows and curtain walls will be included in the study. The study will also make reference to the experience and practices of other countries to ensure that the requirements keep up with the latest international standards.

North East New Territories New Development Areas

15. **MR ANDREW LEUNG** (in Chinese): *President, it is mentioned in the North East New Territories New Development Areas Planning and Engineering Study Stage 3 Public Engagement Digest that the North East New Territories New Development Areas (NDAs) will provide about 54 000 housing flats to accommodate a population of 152 000, as well as providing more than 52 000 job opportunities. In this connection, will the Government inform this Council:*

- (a) *how the authorities will ensure that community facilities such as schools, hospitals, recreational facilities, sports grounds and libraries in the NDAs will commence service in tandem with the first population intake;*
- (b) *whether the authorities will consider establishing an independent police district for the NDAs; if they will, of the police manpower to be deployed; if not, the reasons for that; and*
- (c) *whether projection has been made on the number of residents and workers in the NDAs who will be subject to double taxation because of their cross-boundary employment; how the Government will help them alleviate their tax burden?*

SECRETARY FOR DEVELOPMENT (in Chinese): *President, the objective of implementing the NDAs is to cater for the long-term housing and socio-economic development needs of Hong Kong residents. The North East New Territories New Development Areas Planning and Engineering Study aims to establish a planning and development framework for the Kwu Tung North, Fan Ling North and Ping Che/Ta Kwu Ling NDAs and to formulate development plans and*

implementation strategy. According to the planning announced in the consultation document of the Stage Three Public Engagement (PE3) exercise which was completed in end September this year, the NDAs will provide 533 hectares of developable land, of which about 150 hectares are housing land for developing about 53 800 residential units that can accommodate about 152 000 persons, and about 52 000 local employment opportunities will be created. The NDAs will be the main source of new housing in Hong Kong from 2022 onwards.

We are collating and analysing in a comprehensive manner the public comments collected during the PE3 exercise. The major issues of public concern and the Administration's initial responses have been set out in detail in the paper submitted to the Legislative Council Panel on Development on 30 October this year (LC Paper No. CB(1)61/12-13(05)). As stated by the Development Bureau at the Panel meeting, the Administration would consider and assess the comments carefully and adjust the planning proposals for the NDAs as appropriate after examining the comments from the planning and engineering feasibility perspectives. The adjustments would include increasing the public to private housing ratio in the NDAs to over 50%, and suitable sites would be identified for new Home Ownership Scheme developments to meet the housing demand of the public.

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

- (a) The planning of the NDAs is people-oriented, and has fully taken into account the needs of the residents. Sufficient land has been reserved in the NDAs for providing open space and community facilities (including school, hospital, sports ground, library and recreational facilities) in accordance with the Hong Kong Planning Standards and Guidelines. Having regard to the past experience in new town development and the public comments on the planning study, the Administration has proposed the Conventional New Town Approach during the PE3 exercise for implementation of the NDAs proposal. One of the merits of the approach is that an exact development programme can be set, based on which relevant government departments could make plans for the supporting public services and facilities in a timely and orderly manner to cater for the population that gradually move in. The Administration will

consider the comments received in the PE3 exercise, including those on the approach that should be taken in implementing the NDAs project before deciding on the way forward.

- (b) The police have all along conducted timely reviews of the changes in demand for policing services due to district developments with a view to ensuring effective use of the police's resources and providing efficient services to the community. Specific arrangements of the policing facilities for the North East New Territories NDAs will be finalized in a later planning stage.
- (c) The commercial and other economic activities in the NDAs provide employment opportunities mainly for local residents. The current planning study has not projected as to whether the residents and workers in the NDAs will be engaged in cross-boundary employment.

As a general arrangement for Hong Kong residents engaged in cross-boundary employment, Hong Kong and the Mainland signed in August 2006 the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (Arrangement) to reduce the occurrences of double taxation on residents of both places for their direct (such as income from personal services) and indirect (such as dividends) incomes. The HKSAR Government will liaise closely with the Mainland authorities to effectively implement the Arrangement to ensure that residents of both places engaged in cross-boundary employment will not be subject to double taxation.

Guidelines on Wage Payment Monitoring and Reimbursement of Contractor's and Sub-contractors' Contributions to the Mandatory Provident Fund for Their Site Personnel

16. **DR FERNANDO CHEUNG** (in Chinese): *President, according to the Guidelines on Wage Payment Monitoring and Reimbursement of Contractor's and Sub-contractors' Contributions to the Mandatory Provident Fund for their*

Site Personnel (the Guidelines) formulated by the Development Bureau, the Bureau will reimburse contractors of public works projects the mandatory contributions to the Mandatory Provident Fund (MPF) paid by them and their sub-contractors for their site personnel. I have received a complaint from a member of the public alleging that such practice favours those contractors. In this connection, will the Government inform this Council:

- (a) when and why the Development Bureau formulated the Guidelines; whether it consulted the public during the formulation of the Guidelines;*
- (b) as it is stipulated in paragraph 3.2.1 of the Guidelines that three categories of site personnel holding managerial/supervisory positions are exempted from providing copies of employment contracts as well as records of wage payment and MPF contributions to the Government, of the authorities' considerations or grounds for granting exemptions to such site personnel; in the absence of such information, how the authorities ensure that the contractors will not be reimbursed amounts exceeding those actually required;*
- (c) apart from those contractors to which the Guidelines are applicable, whether the Government at present reimburses any other private organizations their MPF contributions for their employees; if so,
 - (i) of the implementation date of such practice;*
 - (ii) of the business nature and number of these employers; and*
 - (iii) of the amount of MPF contributions reimbursed in each of the past three years and the administrative costs involved; and**
- (d) as some members of the public have pointed out that the practice of the Government reimbursing contractors of public works projects their MPF contributions is unfair to other employers, whether the Government will consider abolishing such practice; if it will, of the timeframe and plans; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, we all along are very concerned with the protection of wages of site personnel. There was a marked increase in the number of wage disputes involving public works in 2004. The Mandatory Provident Fund Schemes Authority (MPFA) has also raised to us that a majority of complaints on arrears of MPF contributions are related to the construction industry. In view of the above, the then Environment, Transport and Works Bureau, in collaboration with relevant government departments, the MPFA as well as related trade associations and labour unions of the construction industry set up a working group in January 2005 to draw up improvement measures for resolving problems related to arrears of wages and MPF contributions in the industry.

The working group has proposed to implement a series of measures in public works contracts to protect and control wage payment of site personnel. They include requiring site personnel to enter into written employment contracts with their employers; making wage payment through autopay arrangements with banks; employing labour relations officers to control wage payment records and to deal with complaints about wage arrears. Furthermore, when submitting tenders, contractors would normally include and reflect in their tender prices the MPF contributions that they would make for site personnel to be employed. To resolve the arrears problems of MPF contributions in the industry, the working group has recommended providing a separate item in the tender documents for MPF contributions to distinguish it from other items in the tender price list. Prior to making proper MPF contributions by relevant employers for the site personnel employed by them, contractors would not be released with the payment for relevant contributions. The relevant protection and control measures have been introduced into some public works contracts in steps on a trial basis since December 2005, and included in all capital works contracts since July 2008.

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

- (a) Since the implementation of the abovementioned measures for controlling wage payment, we have been monitoring their operating situation. We have also been collecting feedbacks from stakeholders, including project management personnel of works departments, labour relations officers and related trade associations. Some industry stakeholders have reflected to us that they had encountered some problems in the execution of relevant contract

provisions. They have requested the Development Bureau to issue guidelines on these measures for reference of the industry. After consulting the views of industry stakeholders, we issued the Guidelines in July this year. The Guidelines is to provide guidance for front-line staff responsible for works projects so that the measures could be implemented effectively, smoothly and consistently in all public works projects. We will maintain communication with industry stakeholders and front-line staff of works departments to listen to their views.

- (b) Since the above measures for controlling wage payment have been fully implemented in July 2008 and operational for a period of time, the Hong Kong Construction Association, the Hong Kong Federation of Electrical & Mechanical Contractors Ltd., the Hong Kong General Building Contractors Association, the Hong Kong Construction Sub-contractors Association and various contractors reflected a concern to us. It is about the need to process personnel data including wages of their employees, through a number of procedures, when applying for releasing their payment for MPF contributions. For example, information of MPF contributions for a sub-contractor's employees must first be submitted to the contractor. Upon consolidation by the contractor's staff, the information would then be passed to labour relations officers for vetting before it is forwarded to the engineer/architect/surveyor of the contract for certification. The relevant trade associations have pointed out that the employment contracts and wages of their managerial/supervisory staff are sensitive business information which may become accessible to different people in the application process. This could undermine the confidentiality of the relevant information. Moreover, some site personnel holding managerial/supervisory positions are unwilling to disclose information of their employment contracts and wages to third parties. Therefore, the trade associations proposed that site personnel holding managerial/supervisory positions should be exempted from providing such information.

After carefully balancing the request to exempt managerial/supervisory personnel from providing information of

their employment contracts and wages information, and the little need for a full protection under the above measures for the relevant personnel, we stipulated in paragraph 3.2.1 of the Guidelines that the following three categories of managerial/supervisory personnel may apply for exemption to provide their employment contracts and wages information:

- (i) administration personnel directly employed by and based in the headquarters of the Contractor, first-tier sub-contractors or design consultants employed by the Contractor;
- (ii) site management staff listed in the organization chart of the Contractor as members of the Contractor's Management Team or the sole supervisor in-charge listed in the organization chart of the first-tier sub-contractors; and
- (iii) other site management staff listed in the organization chart of the Contractor or first-tier sub-contractors, or design consultants directly employed/engaged by the Contractor, and who are employed on a monthly salary basis with a monthly income exceeding \$25,000.

When submitting the relevant exemption application, the managerial/supervisory personnel and contractor concerned must furnish information as listed in paragraph 3.2.3 (a) to (c) of the Guidelines, including: (1) a statement signed by the managerial/supervisory personnel to the effect that they refuse to disclose their employment contracts and information related to wage payment; (2) a declaration made by the contractor or sub-contractor to confirm that the managerial/supervisory personnel are under his direct employment; and (3) information provided by the contractor or sub-contractor showing that the site personnel in the application are holding a managerial/supervisory position.

All managerial/supervisory personnel exempted from submitting their wage payment and MPF contributions records are required to make a declaration at the end of each payment cycle to the engineer/architect/surveyor of the contract to the effect that they

have received the full wage payment and the MPF contributions payable to them by their employer. A contractor claiming for release of payment for MPF contributions paid to the exempted personnel is required to submit a declaration to the effect that he has made such contributions for the personnel concerned and with the amount specified. Moreover, the Guidelines have also stipulated that the engineer/architect/surveyor of the contract shall conduct spot checks to verify that the amount of MPF contributions being claimed in the contractor's payment application has been calculated according to the methodology set out in the Guidelines and to confirm with the exempted personnel whether their employer has paid MPF contributions for them.

- (c) The afore-mentioned arrangement involves the provision of a separate item for MPF contributions in the tender documents such that, prior to making proper MPF contributions by relevant employers for the site personnel employed by them, contractors would not be released with their payment for relevant contributions. According to information now made available to us, the arrangement is only available to public works contractors. The Government does not have similar arrangement with other private sector organizations in releasing the MPF contributions that they have made for their employees, as a measure for protecting employees.
- (d) As mentioned above, when submitting tenders, contractors would normally include and reflect in their tender prices the MPF contributions that they would have to make for site personnel to be employed by them. In fact, in providing a separate item for MPF contributions in the tender documents such that, prior to making proper MPF contributions by relevant employers for the site personnel employed by them, contractors would not be released with their payment for relevant contributions. It could help prevent contractors from deliberately lowering the tender price in order to win the works contracts, and subsequently evading the obligations to make MPF contributions to site personnel upon award of the works contracts in order to cut costs. Nevertheless, regardless of whether there is such a measure, contractors should have reflected employers' MPF contributions for site personnel in the overall tender price.

Also, contractors and sub-contractors will not be relieved from fulfilling their obligations as employers under the Mandatory Provident Fund Schemes Ordinance. Therefore, the abovementioned arrangement is in fact a protection measure for employees and will neither favour any contractor nor cause any unfairness to other employers.

Monitoring of Administration of Estates by Charities

17. **MR JAMES TO** (in Chinese): *President, according to the information on the webpage of the Department of Justice, the Secretary for Justice is the Protector of Charities. Some members of the public have pointed out that as such, the Secretary for Justice has the duty and statutory power to safeguard the interests of all charities. It has been learnt that the estate of a lady amounts to tens of billion Hong Kong dollars, and her will states, "at my death, my entire estate shall be appropriated to the 'Chinachem Charitable Foundation Limited'". In this connection, will the Government inform this Council:*

- (a) *whether it knows the exact amount of the aforesaid estate;*
- (b) *of the role of the Secretary for Justice in the aforesaid case;*
- (c) *of the efforts made by the authorities to ensure that the aforesaid estate is properly conserved and appropriated to the Chinachem Charitable Foundation Limited (Foundation) for charitable purposes, and will not be misappropriated for other non-charitable purposes; whether they have assessed the effectiveness of such efforts, as well as if the aforesaid estate has been properly conserved so far and can be appropriated to the Foundation for charitable purposes; if they have, of the outcome; and*
- (d) *whether it has assessed if the current management and operation of the Foundation can ensure that the vast majority of resources of the Foundation will be used to promote charitable work and operated in a mode which is in the public interest; if it has, of the outcome; if not, whether it will conduct such an assessment and announce the outcome; whether the authorities will monitor the management and operation of the Foundation in order to discharge the duty of the Secretary for Justice as the Protector of Charities?*

SECRETARY FOR JUSTICE (in Chinese): President, my reply to the various parts of the question is as follows:

- (a) In relation to the case in question, the Department of Justice is aware of the approximate value of the Estate. However, the eventual distribution of the subject estate (the Estate) (including the portion bequeathed for charitable purposes) is to be determined by the Court after the hearing on the construction of the will. At this stage, independent interim administrators appointed by the Court are responsible for the administration of the Estate, the matters concerning the administration of which (including the value of the properties of the Estate already identified) are subject to the Court's supervision and are not to be disclosed to the public. Therefore, it is not appropriate for the Department of Justice to disclose information about the approximate value of the Estate outside legal proceedings.
- (b) The Secretary for Justice is acting in his capacity as the protector of charities in the case and has taken out legal proceedings to seek guidance from the Court on the proper construction of the will in question in order to determine the eventual distribution of the Estate.
- (c) Since December 2007, with the agreement of the Department of Justice and the parties concerned, the Estate has been administered by independent interim administrators (all being professional accountants) appointed by the Court. Pursuant to the Court's order, the interim administrators are authorized to manage the properties and affairs of the Estate. The principal responsibilities of the interim administrators are to get in and preserve the properties of the Estate, including to make enquiries as they deem reasonably necessary or to take out relevant legal proceedings, and to require any person(s) having custody, control or management of properties of the Estate to forthwith deliver or transfer to the interim administrators such properties, so as to ensure that the Estate is properly preserved. The interim administrators shall not make any distribution of all or any part of the Estate without first obtaining the consent of both the Department of Justice and Foundation to such

distribution or the Court's consent. The interim administrators are also required to submit periodical reports to the Court, the Department of Justice and the Foundation on the conduct of the administration.

In other words, the interim administrators are primarily responsible for the administration and preservation of the Estate. The interim administrators, being officers of the Court, owe a duty to the Court on matters relating to the interim administration of the Estate and the Court may give directions to the interim administrators as may be required.

The Department of Justice at all time keeps an eye on the administration of the Estate and has been in contact with the interim administrators, including considering the periodical reports provided by the interim administrators, approaching the interim administrators to further understand matters relating to the interim administration of the Estate, and assisting the Court in legal proceedings taken out by the interim administrators in the course of interim administration as may be required.

As mentioned above, the independent interim administrators are primarily responsible for the interim administration of the Estate. The work of the interim administrators is subject to the Court's supervision and the Department of Justice keeps an eye thereon. If necessary, the Department of Justice will approach the interim administrators to further understand the position concerning the administration of the Estate.

- (d) Generally speaking, charities are generally allowed to operate autonomously under their own governing bodies and in accordance with their own rules and regulations. Except otherwise prescribed by statute, it is for the charity to decide the manner in which the public is to be informed about its operation. As the protector of charities, the Secretary for Justice is necessarily a party to charity proceedings and represents the beneficial interest or objects of the charity, but not a "regulator" as such. Unless there is sufficient

information or evidence which suggests a potential breach of charitable trust or maladministration on the part of any charities, the Department of Justice will not on its own accord make any enquiries or assessments of the management and operation of individual charities.

Further, as mentioned in the reply under part (c) above, the Estate in question is currently administered and preserved by independent interim administrators. The eventual distribution of the Estate is to be determined by the Court after the hearing on the construction of the will. The Department of Justice will carefully consider the Court's judgment to be delivered and will take such follow-up actions as may be necessary.

Admission of Non-local Students by University Grants Committee-funded Tertiary Institutions

18. **MR IP KIN-YUEN** (in Chinese): *President, regarding the policy and statistics on admission of non-local students by the tertiary institutions funded by the University Grants Committee (UGC) (UGC-funded institutions), will the Government inform this Council:*

- (a) *given that under the existing policy, UGC-funded institutions may admit non-local students to their degree programmes up to a level not exceeding 20% of the approved UGC-funded student number for such programmes, which comprises up to 4% within the UGC-funded number and up to 16% outside the UGC-funded number, whether it knows how UGC sets such percentages and how the UGC-funded institutions determine their actual numbers and percentages of non-local students admitted each year; whether there is any requirement on the ratio of local to non-local students admitted by the UGC-funded institutions each year for research master's and doctoral degree programmes;*
- (b) *whether it knows, in each of the past three years, the respective numbers and percentages of local students, Mainland students and students from other places admitted by each UGC-funded institution, with a breakdown by the level of study (that is, sub-degree, degree,*

taught master's degree as well as research master's degree and doctoral degree levels);

- (c) whether it knows, in the past three years, the respective number and percentage of non-local students over-enrolled in each UGC-funded institution; the reasons for the UGC-funded institutions' over-enrolment of non-local students; of the mechanism put in place by the authorities for monitoring the over-enrolment of non-local students by the UGC-funded institutions;*
- (d) whether it knows, in the past three years, the respective numbers and percentages of local students, Mainland students and students from other places admitted by each UGC-funded institution in teachers' training programmes, with a breakdown by the level of study; of the respective numbers of graduates of such programmes from the Mainland and other places who are staying or working in Hong Kong; and*
- (e) of the respective numbers of places of full-time and part-time research master's and doctoral degree programmes in each UGC-funded institution; whether the authorities have any measure to ensure that local students applying for such programmes will be accorded priority in admission; whether it knows the respective numbers of graduates of such programmes from the Mainland and other places who are staying or working in Hong Kong?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) Under the existing policy, UGC-funded institutions may admit non-local students to their sub-degree, degree and taught post-graduate programmes up to a level not exceeding 20% of the approved student number targets for these programmes. This 20% quota comprises up to 4% within the UGC-funded number and up to 16% outside the UGC-funded number. In 2008, the Administration raised the quota from 10% to 20% and maintained the 4% quota within the UGC-funded number, so that non-local students are primarily admitted by over-enrolment on top of the approved student number targets and they will not compete directly with local

students. No quota restriction is imposed on the admission of non-local students in publicly-funded research post-graduate (RPg) programmes by UGC-funded institutions.

As long as UGC-funded institutions comply with the above policy, they may decide on the actual enrolment of non-local students.

(b) and (c)

The enrolment of local, Mainland and other non-local students studying UGC-funded programmes by level of study from the 2009-2010 academic year to 2011-2012 academic year is at Annex 1.

According to Annex 1, UGC-funded institutions have been complying with the existing policy in admitting non-local students, and there has been no over-enrolment for the past three years. UGC-funded institutions submit relevant student enrolment figures to UGC regularly for statistical purpose, and UGC review institutions' enrolment figures from time to time.

(d) The enrolment of local, Mainland and other non-local students studying UGC-funded teacher education programmes by level of study from the 2009-2010 academic year to 2011-2012 academic year is at Annex 2. The Administration does not maintain records of non-local graduates of such programmes who are staying or working in Hong Kong.

(e) The number of places of RPg programmes of UGC-funded institutions in the 2012-2013 academic year is at Annex 3. The number of publicly-funded RPg places will remain at 5 595 from the 2012-2013 academic year to the 2014-2015 academic year. The Administration does not maintain records of non-local graduates of publicly-funded RPg programmes who are staying or working in Hong Kong.

UGC-funded institutions admit students to their RPg programmes on a merit basis, taking into account students' academic results, research capability, and so on, but not their places of origin. In the 2011-2012 academic year, about 25% of the applications for

research programmes by local students were admitted by institutions, whilst about 9% of non-local applicants were admitted. Admission of qualified non-local students to RPg programmes not only diversifies the student mix, but also helps boost the level of local research programmes and enhance the effectiveness of public spending.

Annex 1

Student Enrolment and Percentages of UGC-funded Programmes
by Institution, Level of Study and Place of Origin, 2009-2010

Institution	Level of study	Place of Origin						Total Number
		Local		The Mainland of China		Other non-local		
		Number	Percentage	Number	Percentage	Number	Percentage	
City University of Hong Kong	Sub-degree	927	100%	-	-	-	-	927
	Undergraduate	7 858	92%	636	7%	51	1%	8 545
	Taught Post-graduate	50	89%	3	5%	3	5%	56
	RPg	132	23%	420	73%	23	4%	575
	Sub-total	8 967	89%	1 059	10%	77	1%	10 103
Hong Kong Baptist University	Undergraduate	4 307	91%	428	9%	8	0%	4 743
	Taught Post-graduate	596	100%	2	0%	-	-	598
	RPg	75	33%	149	66%	1	0%	225
	Sub-total	4 978	89%	579	10%	9	0%	5 566
Lingnan University	Undergraduate	2 136	91%	180	8%	22	1%	2 338
	RPg	30	53%	27	47%	-	-	57
	Sub-total	2 166	90%	207	9%	22	1%	2 395
The Chinese University of Hong Kong	Undergraduate	10 030	91%	848	8%	134	1%	11 012
	Taught Post-graduate	987	99%	4	0%	1	0%	992
	RPg	645	38%	997	59%	36	2%	1 678
	Sub-total	11 662	85%	1 849	14%	171	1%	13 682
The Hong Kong Institute of Education	Sub-degree	1 935	100%	-	-	-	-	1 935
	Undergraduate	3 608	94%	227	6%	-	-	3 835
	Taught Post-graduate	807	99%	9	1%	-	-	816
	RPg	-	-	-	-	-	-	-
	Sub-total	6 350	96%	236	4%	-	-	6 586
The Hong Kong Polytechnic University	Sub-degree	4 141	100%	2	0%	4	0%	4 147
	Undergraduate	8 899	91%	818	8%	73	1%	9 790
	Taught Post-graduate	136	100%	-	-	-	-	136
	RPg	204	33%	392	63%	31	5%	627
	Sub-total	13 380	91%	1 212	8%	108	1%	14 700

Institution	Level of study	Place of Origin						
		Local		The Mainland of China		Other non-local		Total
		Number	Percentage	Number	Percentage	Number	Percentage	Number
The Hong Kong University of Science and Technology	Undergraduate	5 345	89%	517	9%	142	2%	6 004
	Taught Post-graduate	-	-	-	-	-	-	-
	RPg	263	25%	754	71%	41	4%	1 058
	Sub-total	5 608	79%	1 271	18%	183	3%	7 062
The University of Hong Kong	Undergraduate	9 236	89%	908	9%	199	2%	10 343
	Taught Post-graduate	982	97%	17	2%	14	1%	1 013
	RPg	890	42%	1 091	52%	121	6%	2 102
	Sub-total	11 108	83%	2 016	15%	334	2%	13 458
All institutions	Sub-degree	7 003	100%	2	0%	4	0%	7 009
	Undergraduate	51 419	91%	4 562	8%	629	1%	56 610
	Taught Post-graduate	3 558	99%	35	1%	18	0%	3 611
	RPg	2 239	35%	3 830	61%	253	4%	6 322
	Total	64 219	87%	8 429	11%	904	1%	73 552

Notes:

- (1) RPg figures include only students funded by UGC within normal study periods.
- (2) The place of origin for non-local students refers to their nationality.
- (3) Percentages may not add up to 100% due to rounding.
- (4) '-' denotes 'nil'.

Student Enrolment and Percentages of UGC-funded Programmes
by Institution, Level of Study and Place of Origin, 2010-2011

Institution	Level of Study	Place of Origin						
		Local		The Mainland of China		Other non-local		Total
		Number	Percentage	Number	Percentage	Number	Percentage	Number
City University of Hong Kong	Sub-degree	900	100%	-	-	-	-	900
	Undergraduate	7 905	92%	624	7%	91	1%	8 620
	Taught Post-graduate	48	92%	2	4%	2	4%	52
	RPg	129	20%	498	75%	33	5%	660
	Sub-total	8 982	88%	1 124	11%	126	1%	10 232
Hong Kong Baptist University	Undergraduate	4 341	91%	437	9%	8	0%	4 786
	Taught Post-graduate	529	99%	3	1%	-	-	532
	RPg	69	29%	153	64%	16	7%	238
	Sub-total	4 939	89%	593	11%	24	0%	5 556

Institution	Level of Study	Place of Origin						
		Local		The Mainland of China		Other non-local		Total
		Number	Percentage	Number	Percentage	Number	Percentage	Number
Lingnan University	Undergraduate	2 021	91%	191	9%	21	1%	2 233
	RPg	32	54%	24	41%	3	5%	59
	Sub-total	2 053	90%	215	9%	24	1%	2 292
The Chinese University of Hong Kong	Undergraduate	10 205	91%	852	8%	156	1%	11 213
	Taught Post-graduate	989	99%	8	1%	4	0%	1 001
	RPg	603	35%	1 053	62%	44	3%	1 700
	Sub-total	11 797	85%	1 913	14%	204	1%	13 914
The Hong Kong Institute of Education	Sub-degree	1 943	100%	-	-	-	-	1 943
	Undergraduate	3 904	94%	242	6%	4	0%	4 150
	Taught Post-graduate	865	99%	8	1%	-	-	873
	RPg	4	40%	6	60%	-	-	10
	Sub-total	6 716	96%	256	4%	4	0%	6 976
The Hong Kong Polytechnic University	Sub-degree	4 135	100%	2	0%	3	0%	4 140
	Undergraduate	8 971	90%	848	9%	101	1%	9 920
	Taught Post-graduate	56	100%	-	-	-	-	56
	RPg	191	31%	383	62%	42	7%	616
	Sub-total	13 353	91%	1 233	8%	146	1%	14 732
The Hong Kong University of Science and Technology	Undergraduate	5 411	88%	497	8%	243	4%	6 151
	Taught Post-graduate	-	-	-	-	-	-	-
	RPg	224	21%	796	73%	63	6%	1 083
	Sub-total	5 635	78%	1 293	18%	306	4%	7 234
The University of Hong Kong	Undergraduate	9 209	88%	947	9%	336	3%	10 492
	Taught Post-graduate	1 026	96%	22	2%	16	2%	1 064
	RPg	804	38%	1 128	54%	164	8%	2 096
	Sub-total	11 039	81%	2 097	15%	516	4%	13 652
All institutions	Sub-degree	6 978	100%	2	0%	3	0%	6 983
	Undergraduate	51 967	90%	4 638	8%	960	2%	57 565
	Taught Post-graduate	3 513	98%	43	1%	22	1%	3 578
	RPg	2 056	32%	4 041	63%	365	6%	6 462
	Total	64 514	86%	8 724	12%	1 350	2%	74 588

Notes:

- (1) RPg figures include only students funded by UGC within normal study periods.
- (2) The place of origin for non-local students refers to their nationality.
- (3) Percentages may not add up to 100% due to rounding.
- (4) '-' denotes 'nil'.

Student Enrolment and Percentages of UGC-funded Programmes
by Institution, Level of Study and Place of Origin, 2011-2012

Institution	Level of Study	Place of Origin						
		Local		The Mainland of China		Other non-local		Total
		Number	Percentage	Number	Percentage	Number	Percentage	Number
City University of Hong Kong	Sub-degree	1 102	100%	-	-	-	-	1 102
	Undergraduate	7 891	92%	590	7%	113	1%	8 594
	Taught Post-graduate	43	81%	6	11%	4	8%	53
	RPg	110	16%	524	77%	44	6%	678
	Sub-total	9 146	88%	1 120	11%	161	2%	10 427
Hong Kong Baptist University	Undergraduate	4 334	90%	450	9%	9	0%	4 793
	Taught Post-graduate	529	99%	3	1%	-	-	532
	RPg	56	25%	148	67%	18	8%	222
	Sub-total	4 919	89%	601	11%	27	0%	5 547
Lingnan University	Undergraduate	1 962	91%	169	8%	21	1%	2 152
	RPg	26	42%	26	42%	10	16%	62
	Sub-total	1 988	90%	195	9%	31	1%	2 214
The Chinese University of Hong Kong	Undergraduate	10 383	90%	911	8%	210	2%	11 504
	Taught Post-graduate	1 127	99%	9	1%	4	0%	1 140
	RPg	568	33%	1 109	64%	57	3%	1 734
	Sub-total	12 078	84%	2 029	14%	271	2%	14 378
The Hong Kong Institute of Education	Sub-degree	1 904	100%	-	-	-	-	1 904
	Undergraduate	4 200	95%	211	5%	5	0%	4 416
	Taught Post-graduate	858	99%	10	1%	2	0%	870
	RPg	8	28%	18	62%	3	10%	29
	Sub-total	6 970	97%	239	3%	10	0%	7 219
The Hong Kong Polytechnic University	Sub-degree	3 919	100%	-	-	2	0%	3 921
	Undergraduate	8 993	90%	801	8%	151	2%	9 945
	Taught Post-graduate	26	100%	-	-	-	-	26
	RPg	166	27%	390	64%	54	9%	610
	Sub-total	13 104	90%	1 191	8%	207	1%	14 502
The Hong Kong University of Science and Technology	Undergraduate	5 573	87%	474	7%	342	5%	6 389
	Taught Post-graduate	-	-	-	-	-	-	-
	RPg	167	14%	902	77%	97	8%	1 166
	Sub-total	5 740	76%	1 376	18%	439	6%	7 555

<i>Institution</i>	<i>Level of Study</i>	<i>Place of Origin</i>						
		<i>Local</i>		<i>The Mainland of China</i>		<i>Other non-local</i>		<i>Total</i>
		<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>
The University of Hong Kong	Undergraduate	9 162	86%	977	9%	480	5%	10 619
	Taught Post-graduate	1 016	95%	27	3%	22	2%	1 065
	RPg [^]	704	34%	1 181	57%	185	9%	2 071
	Sub-total [^]	10 882	79%	2 185	16%	687	5%	13 755
All institutions	Sub-degree	6 925	100%	-	-	2	0%	6 927
	Undergraduate	52 498	90%	4 583	8%	1 331	2%	58 412
	Taught Post-graduate	3 599	98%	55	1%	32	1%	3 686
	RPg [^]	1 805	27%	4 298	65%	468	7%	6 572
	Total [^]	64 827	86%	8 936	12%	1 833	2%	75 597

Notes:

- (1) RPg figures include only students funded by UGC within normal study periods.
- (2) The place of origin for non-local students refers to their nationality.
- (3) Percentages may not add up to 100% due to rounding.
- (4) '-' denotes 'nil'.
- (5) '^' Figures may not add up to the corresponding totals due to rounding. If the RPg students are financed by institutions using both UGC and external funds, they will be counted towards different sources on a pro-rata basis, which leads to the possibility of having decimal places for the number of RPg students.

Annex 2

Student Enrolment and Percentages of UGC-funded Teacher Education Programmes by Institution, Level of Study and Place of Origin, 2009-2010

<i>Institution</i>	<i>Level of Study</i>	<i>Place of Origin</i>				
		<i>Local</i>		<i>Non-local</i>		<i>Total</i>
		<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>
Hong Kong Baptist University	Undergraduate	226	100%	1	0%	227
	Taught Post-graduate	596	100%	2	0%	598
	Sub-total	822	100%	3	0%	825
Lingnan University	Undergraduate	30	100%	-	-	30
	Sub-total	30	100%	-	-	30
The Chinese University of Hong Kong	Undergraduate	405	100%	1	0%	406
	Taught Post-graduate	856	100%	-	-	856
	Sub-total	1 261	100%	1	0%	1 262

<i>Institution</i>	<i>Level of Study</i>	<i>Place of Origin</i>				
		<i>Local</i>		<i>Non-local</i>		<i>Total</i>
		<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>
The Hong Kong Institute of Education	Sub-degree	1 935	100%	-	-	1 935
	Undergraduate	3 608	94%	227	6%	3 835
	Taught Post-graduate	807	99%	9	1%	816
	Sub-total	6 350	96%	236	4%	6 586
The Hong Kong University of Science and Technology	Undergraduate	70	100%	-	-	70
	Sub-total	70	100%	-	-	70
The University of Hong Kong	Undergraduate	394	97%	11	3%	405
	Taught Post-graduate	612	100%	1	0%	613
	Sub-total	1 006	99%	12	1%	1 018
All institutions	Sub-degree	1 935	100%	-	-	1 935
	Undergraduate	4 733	95%	240	5%	4 973
	Taught Post-graduate	2 871	100%	12	0%	2 883
	Total	9 539	97%	252	3%	9 791

Notes:

- (1) The place of origin for non-local students refers to their nationality.
- (2) Percentages may not add up to 100% due to rounding.
- (3) '-' denotes 'nil'.
- (4) Information on place of origin of students by level of study has been collected since the academic year 2010-2011. Therefore, the corresponding figures in the academic year 2009-2010 can only be classified into "local" and "non-local".

**Student Enrolment and Percentages of UGC-funded Teacher Education Programmes
by Institution, Level of Study and Place of Origin, 2010-2011**

<i>Institution</i>	<i>Level of Study</i>	<i>Place of Origin</i>						
		<i>Local</i>		<i>The Mainland of China</i>		<i>Other non-local</i>		<i>Total</i>
		<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>
Hong Kong Baptist University	Undergraduate	257	99%	2	1%	1	0%	260
	Taught Post-graduate	529	99%	3	1%	-	-	532
	Sub-total	786	99%	5	1%	1	0%	792
The Chinese University of Hong Kong	Undergraduate	391	100%	-	-	1	0%	392
	Taught Post-graduate	860	100%	-	-	-	-	860
	Sub-total	1 251	100%	-	-	1	0%	1 252
The Hong Kong Institute of Education	Sub-degree	1 943	100%	-	-	-	-	1 943
	Undergraduate	3 813	94%	233	6%	3	0%	4 049
	Taught Post-graduate	865	99%	8	1%	-	-	873
	Sub-total	6 621	96%	241	4%	3	0%	6 865

<i>Institution</i>	<i>Level of Study</i>	<i>Place of Origin</i>						
		<i>Local</i>		<i>The Mainland of China</i>		<i>Other non-local</i>		<i>Total</i>
		<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>
The Hong Kong University of Science and Technology	Undergraduate	75	100%	-	-	-	-	75
	Sub-total	75	100%	-	-	-	-	75
The University of Hong Kong	Undergraduate	400	97%	11	3%	-	-	411
	Taught Post-graduate	648	100%	-	-	-	-	648
	Sub-total	1 048	99%	11	1%	-	-	1 059
All institutions	Sub-degree	1 943	100%	-	-	-	-	1 943
	Undergraduate	4 936	95%	246	5%	5	0%	5 187
	Taught Post-graduate	2 902	100%	11	0%	-	-	2 913
	Total	9 781	97%	257	3%	5	0%	10 043

Notes:

- (1) The place of origin for non-local students refers to their nationality.
- (2) Percentages may not add up to 100% due to rounding.
- (3) '-' denotes 'nil'.

**Student Enrolment and Percentages of UGC-funded Teacher Education Programmes
by Institution, Level of Study and Place of Origin, 2011-2012**

<i>Institution</i>	<i>Level of Study</i>	<i>Place of Origin</i>						
		<i>Local</i>		<i>The Mainland of China</i>		<i>Other non-local</i>		<i>Total</i>
		<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>
Hong Kong Baptist University	Undergraduate	244	99%	2	1%	1	0%	247
	Taught Post-graduate	529	99%	3	1%	-	-	532
	Sub-total	773	99%	5	1%	1	0%	779
The Chinese University of Hong Kong	Undergraduate	380	100%	-	-	1	0%	381
	Taught Post-graduate	1 002	100%	-	-	-	-	1 002
	Sub-total	1 382	100%	-	-	1	0%	1 383
The Hong Kong Institute of Education	Sub-degree	1 904	100%	-	-	-	-	1 904
	Undergraduate	3 927	95%	188	5%	4	0%	4 119
	Taught Post-graduate	858	99%	10	1%	2	0%	870
	Sub-total	6 689	97%	198	3%	6	0%	6 893
The Hong Kong University of Science and Technology	Undergraduate	70	100%	-	-	-	-	70
	Sub-total	70	100%	-	-	-	-	70

<i>Institution</i>	<i>Level of Study</i>	<i>Place of Origin</i>						
		<i>Local</i>		<i>The Mainland of China</i>		<i>Other non-local</i>		<i>Total</i>
		<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>
The University of Hong Kong	Undergraduate	422	97%	10	2%	4	1%	436
	Taught Post-graduate	646	100%	-	-	1	0%	647
	Sub-total	1 068	99%	10	1%	5	0%	1 083
All institutions	Sub-degree	1 904	100%	-	-	-	-	1 904
	Undergraduate	5 043	96%	200	4%	10	0%	5 253
	Taught Post-graduate	3 035	99%	13	0%	3	0%	3 051
	Total	9 982	98%	213	2%	13	0%	10 208

Notes:

- (1) The place of origin for non-local students refers to their nationality.
- (2) Percentages may not add up to 100% due to rounding.
- (3) '-' denotes 'nil'.

Annex 3

Number of places of UGC-funded RPg programmes
in the 2012-2013 academic year

<i>Institution</i>	<i>Number of places</i>
City University of Hong Kong	495
Hong Kong Baptist University	199
Lingnan University	58
The Chinese University of Hong Kong	1 563
The Hong Kong Institute of Education	35
The Hong Kong Polytechnic University	532
The Hong Kong University of Science and Technology	1 124
The University of Hong Kong	1 589
Total	5 595

Note:

The Administration does not maintain statistics on the breakdown of number of places into full-time and part-time as well as master and doctoral programmes.

Traffic Accidents in Hong Kong International Airport

19. **MR WU CHI-WAI** (in Chinese): *President, it has been reported that in September this year, a cleaning worker had his left leg run over and dragged by an electric baggage vehicle in the Baggage Hall at the basement of the passenger terminal building at the Hong Kong International Airport. It has also been reported that when the Baggage Hall is packed with baggage and the driveway is blocked during peak hours, electric baggage vehicles need to go in the opposite direction of the traffic from time to time, and the aforesaid accident may be related to such a situation. In this connection, will the Government inform this Council:*

- (a) *whether it knows the present condition of the injured cleaning worker; what assistance has been provided to him by the employer concerned, as well as whether the employer has reported the accident to the Labour Department (LD) within the specified period and made compensation to the injured employee in accordance with the Employees' Compensation Ordinance (Cap. 282); if it has, of the details; as it has been reported that the worker needed to have his left leg amputated to save his life, whether the Government will follow up the case and provide assistance to the victim and his family members; if it will, of the details; if not, the reasons for that;*
- (b) *whether the Government and the Airport Authority Hong Kong (AA) have conducted investigation into the aforesaid incident; if they have, of the details and outcome;*
- (c) *of the number of traffic accidents which occurred within the airport area in each of the past five years, the resultant casualties, the number of relevant persons convicted, and whether it knows the details of the follow-up measures implemented by AA, together with a breakdown by the various parts (for example, the Baggage Hall at the basement of the airport passenger terminal building, the restricted area and the car parks, and so on) of the airport;*
- (d) *which government departments are currently responsible for monitoring the traffic order at various parts of the airport and enforcing the relevant legislation; of the number of people who had*

been penalized for contravening traffic rules or regulations within the airport area in each of the past five years;

- (e) whether it knows the improvement measures implemented by AA in each of the past five years on the traffic order at various parts of the airport and enhancement of the baggage handling procedure; and*
- (f) whether it knows the details of the assessments conducted regularly on traffic order and safety by AA on airport staff engaging in various types of jobs (for example, driving, handling and carrying baggage, and so on), as well as the training and working guidelines provided to them at present in this respect?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, regarding Mr WU's question about a traffic accident which happened in September this year in the Baggage Hall at the basement of the Hong Kong International Airport, my reply is as follows:

- (a) Due to privacy reason, we are not able to disclose details concerning the injury of the victim.

Subsequent to the accident, the employer of the victim has reported the work injury case to the LD as required under the Employees' Compensation Ordinance (Cap. 282) and has provided him with an emergency relief of \$50,000. The employer will pay the victim a sum equivalent to four fifths of his salary every month, bear all his medical expenses, and follow up with the LD on other compensation arrangements. The LD has conducted a site inspection afterwards to find out more about the accident.

The victim was taken to hospital for treatment after the accident. During his hospitalization, the medical social worker of the Social Welfare Department (SWD) stationed at the hospital provided psychological counselling and assistance to the victim and his family to help them overcome emotional and livelihood problems arising from the trauma and disability. Assistance offered include,

providing them with a financial relief of \$40,000 under the Rainbow Fund of The Community Chest, and introducing to them the medical fee waiver service. The SWD is also processing the victim's application for Traffic Accident Victims Assistance.

Following the victim's transfer to another hospital for treatment, his case has been referred to the medical social services unit of that hospital by the SWD for follow-up on progress of recovery and for psychological counselling for the victim and his family. Medical social workers will continue to attend to his care needs for rehabilitation after discharge from the hospital to facilitate his full recovery and reintegration into society.

The AA has given an ex gratia payment of \$50,000 to the victim after the accident. A campaign to seek donations from the airport community was also launched. About \$100,000 was raised for the victim as an expression of care and sympathy.

- (b) As the accident involves personal injury, the AA has reported the case to the police immediately. Traffic New Territories South of the police are conducting an investigation into the traffic accident. While the AA has tried to ascertain the cause and other details of the accident, investigation remains the responsibility of the police.
- (c) In the past five years, the number of traffic accidents in the Airport District and the resultant casualties are at Annex I. The police do not maintain a breakdown by the different areas of the airport.

The AA will take suitable follow-up actions for traffic accidents occur within the airport, which include ascertaining the cause and details of the accidents and formulating improvement measures. If the accident involves casualties, the AA will transfer the case to the police for investigation. To enhance safe operation in the restricted area and minimize the possibility of accidents, the AA has also implemented a Driving Offence Points System in the restricted area. The number of points incurred by individual driving offences varies with their risks imposed on the restricted area. A driver who has incurred eight or more points will be disqualified from driving in the

restricted area for three months and is required to resit and pass the relevant examination.

- (d) All vehicles and mobile facilities operated in the restricted area must comply with the regulations stipulated in the Airside Driving Handbook. The AA is responsible for enforcing the regulations. If an accident occurs which involves government vehicles or casualties, the police will conduct investigation and take enforcement actions.

When driving in the non-restricted area of the airport, the driver must comply with the current traffic regulations of Hong Kong. Any offences will be dealt with by the police in accordance with the traffic regulations.

The figures of traffic enforcement actions taken by the police in the Airport District over the past five years are at Annex II.

- (e) The AA has been regularly examining the traffic condition and baggage handling procedures within the airport, and has implemented various preventive and improvement measures.

To ensure traffic safety in the restricted area, the AA has put in place a system for issuing and renewing licences. Regulations and penalties are stipulated in the system. In addition, daily inspection and monitoring are also conducted. Furthermore, the restricted area has speed limits and clear traffic markings and signages, which are maintained and refurbished regularly. A Driving Offence Points Scheme has also been introduced in the restricted area. Offenders will be issued with verbal/written warnings or given driving offence points as appropriate. They will be required to attend retraining as arranged by their company at the earliest instance. A driver who has incurred eight or more points will be disqualified from driving in the restricted area for three months, and is required to resit and pass the relevant examination before resuming his driving qualification.

The AA will analyse the traffic accident statistics to better understand the contributory causes and formulate suitable measures to enhance traffic safety. In 2010, the AA provided additional

markings at major entrances and road surface of the Baggage Hall to alert road users to watch out for pedestrians and vehicles. In 2011, the AA extended the Driving Offence Points Scheme to cover the Baggage Hall. In addition, the AA jointly organizes with the police two driving safety talks every year, conducts more than 50 safety workshops annually and holds monthly meetings on safety issues.

- (f) Airport staff are employed by different organizations which are required to provide necessary training to their employees in accordance with respective labour legislations. This is to ensure that companies and their employees alike fully understand and comply with the safety regulations of the airport. The AA organizes biannual seminars with the companies' management to ensure that all companies provide their front-line staff with the required training.

As regards driving, all vehicles operating in the restricted area must bear a valid Airside Vehicle Licence. Drivers, apart from holding a valid Hong Kong Driving Licence valid for the equivalent class(es) of vehicle they propose to drive, must also pass the Airside Driver Examination to obtain the qualification of driving in the restricted area. They must also resit and pass the above examination every two years to renew their qualification.

Annex I

Statistics on traffic accidents in the Airport District

Number of traffic accidents

<i>Severity</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012 (Jan to Oct)*</i>
Fatal	0	3	1	1	0	0
Serious	15	23	13	21	11	11
Slight	73	80	72	99	98	87
Total	88	106	86	121	109	98

Casualties

<i>Severity</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012 (Jan to Oct)*</i>
Fatal	0	3	1	1	0	0
Serious	15	26	13	21	13	11
Slight	92	142	98	134	131	113
Total	107	171	112	156	144	124

Note:

* Tentative figures as at 6 November 2012

Annex II

Enforcement Statistics of the Airport District

	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012 (Jan to Oct)</i>
Summonses served	145	635	692	1 029	1 107	1 004
Arrests made	0	0	0	0	0	0
Fixed penalty tickets issued	307	443	480	361	317	249
Total	452	1 078	1 172	1 390	1 424	1 253

Applications for One-way Permits for Settlement in Hong Kong by Mainland "Overage Children"

20. **MRS REGINA IP** (in Chinese): *President, under the policy implemented since 1 April 2011, eligible Mainland "overage children" of Hong Kong residents, that is, Mainland residents who were under the age of 14 when their natural fathers or mothers obtained their first Hong Kong identity cards on or before 1 November 2001, may apply for One-Way Permits (OWPs) for settlement in Hong Kong so as to reunite with their natural parents. The first batch of applications processed by the Mainland authorities (hereinafter referred as "first phase") were those of overage children whose fathers or mothers are Hong Kong residents who obtained their Hong Kong identity cards on or before 31 December 1979. Starting from 15 May 2012, the Mainland authorities have been*

processing the second batch of applications (hereinafter referred as "second phase") of overage children whose fathers or mothers are Hong Kong residents who obtained their Hong Kong identity cards on or before 31 December 1980. According to a projection based on the time gap of 13.5 months between the commencement of the two phases, those overage children whose fathers or mothers obtained their Hong Kong identity cards in 2000 must wait for at least 20 years, that is, until 2032, to obtain their OWPs for settlement in Hong Kong. Since some of the applicants will be over 40 years old by then, they would encounter greater adaptation problems on arrival in Hong Kong. In this connection, will the Government inform this Council:

- (a) whether it knows the respective numbers of applications from overage children for settlement in Hong Kong received and approved by the Mainland authorities in the first phase and the second phase so far;*
- (b) whether it knows the average time required by the Mainland authorities for processing an application and the estimated time required for completing the processing of all the aforesaid two batches of applications; when the third phase is expected to commence;*
- (c) as the Security Bureau has stated earlier that the Mainland authorities are further refining the vetting and approval procedures with a view to shortening the vetting and approval time, whether it knows the details of the refinement; and*
- (d) as the Security Bureau indicated in 2011 that the consensus between the Security Bureau and the Mainland authorities was that applications from overage children would be processed by using the previous unused OWP quotas, so as to shorten the waiting time, of the average daily number of unused quotas in the existing daily OWP quota of 150 for Hong Kong; of the current accumulative number of unused OWP quotas and, among them, the percentage of those quotas which are planned to be used for processing applications from overage children?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) According to information from the Mainland authorities, as at end October 2012, the Mainland authorities have received over 38 000 OWP applications from overage children, of which initial assessment of over 28 000 has completed with some 23 000 approved to issue OWP. The Mainland authorities did not provide further breakdown.

(b) and (c)

The Mainland authorities aim to allow eligible Mainland overage children of Hong Kong residents to reunite as early as possible with their natural parents in Hong Kong in an orderly manner. The Mainland authorities are actively processing the OWP applications from overage children. Depending on progress, the Mainland authorities will announce the arrangement of the next phase in due course.

The processing time of OWP applications from overage children depends on individual circumstances, including availability of documentary proof and involvement of aged records. If the Mainland authorities or the Immigration Department (ImmD) has doubt on the parental relationship between the applicant and his/her parents in Hong Kong, the Mainland authorities will arrange DNA tests and the assessment will take a relatively longer time.

With practical assessment experience, the Mainland authorities have refined the assessment procedures to expedite case processing. Measures taken include: the Mainland authorities and the ImmD have taken steps to expedite transmission of documents; the exit and entry administration offices of Guangdong and Fujian Provinces have deployed staff to regions with more applicants to take samples for DNA tests; if the applicants' parents in Hong Kong have special difficulties in travelling to the Mainland for DNA tests, the ImmD may in practicable circumstances help the Mainland authorities take samples in Hong Kong and send the analysis results to the Mainland authorities for confirmation, and so on.

- (d) In the first 10 months in 2012, on average 152 Mainland residents (including Mainland overage children of Hong Kong residents) arrived in Hong Kong for settlement on strength of OWP every day. From July 1997 to October 2012, there are some 80 000 unused OWP quota. There is no specific quota for OWP applications from Mainland overage children of Hong Kong residents.

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Solicitors' Accounts (Amendment) Rules 2012 and the Accountant's Report (Amendment) Rules 2012.

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

PROPOSED RESOLUTION UNDER SECTION 34(2) OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR JUSTICE (in Cantonese): President, I move that the motion as set out in the paper delivered to Members be passed. The motion is to propose amendments to the Solicitors' Accounts (Amendment) Rules 2012 and the Accountant's Report (Amendment) Rules 2012.

These Rules were made by the Council of The Law Society of Hong Kong (Law Society) pursuant to section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice, Court of Final Appeal. The major objectives of the Solicitors' Accounts (Amendment) Rules 2012 are to set out the principles that must be observed by solicitors in handling client's money, and to extend the application of the Solicitors' Accounts Rules as amended to solicitor corporations, foreign lawyers and foreign firms. The Accountant's Report (Amendment) Rules 2012 mainly amend the existing definition of "client account" and introduce a new definition of "solicitor".

These two sets of Rules were tabled at the Legislative Council on 17 October, 2012, together with three other related pieces of subsidiary

legislation made under Cap. 159. A subcommittee was subsequently formed by the House Committee to scrutinize the five sets of subsidiary legislation.

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

At the meeting of the Subcommittee held on 13 November, 2012, Law Society agreed that certain amendments proposed by the Legal Adviser to the Subcommittee should be made to the Solicitors' Accounts (Amendment) Rules 2012 and the Accountant's Report (Amendment) Rules 2012. These amendments have the support of the Subcommittee.

Most of the proposed amendments relate to the drafting aspects of both the English and Chinese texts of the Rules and have no impact on the substance of the provisions in question. The Administration has no objection to these proposed amendments. In the circumstances, I agree to move this motion to propose the amendments agreed between Law Society and the Subcommittee.

I would like to take this opportunity to express my appreciation of the efforts made by Mr Dennis KWOK, the Chairman of the Subcommittee, and other members of the Subcommittee.

Deputy President, I move that the motion be passed. Thank you.

The Secretary for Justice moved the following motion:

"RESOLVED that —

- (a) the Solicitors' Accounts (Amendment) Rules 2012, published in the Gazette as Legal Notice No. 151 of 2012 and laid on the table of the Legislative Council on 17 October 2012, be amended as set out in Schedule 1;
- (b) the Accountant's Report (Amendment) Rules 2012, published in the Gazette as Legal Notice No. 152 of 2012 and laid on the table of the Legislative Council on 17 October 2012, be amended as set out in Schedule 2.

Schedule 1

[para. (a)]

Amendments to Solicitors' Accounts (Amendment) Rules 2012

1. Rule 4 amended (rule 2 amended (interpretation))

- (1) Rule 4(1)(a), Chinese text, after ""指以律師名義在"
—

Add

"銀行開立的往來或儲蓄".

- (2) Rule 4(1)(a), Chinese text, after "牌照的" —

Add

"銀行開立的往來或存款".

- (3) Rule 4(5), new definition of *principal*, after "partner of a firm" —

Add

"and also includes any solicitor who is held out or holds himself or herself out as such a partner or sole practitioner".

2. Rule 6 amended (rule 6A added)

- (1) Rule 6, Chinese text, new rule 6A(1) —

Repeal

"衍生"

Substitute

"累算".

- (2) Rule 6, Chinese text, new rule 6A(2) —

Repeal

"衍生"

Substitute

"累算".

- (3) Rule 6, English text, new rule 6A(3)(b) —

Repeal

"On"

Substitute

"After".

- (4) Rule 6, Chinese text, new rule 6A(6) —

Repeal

"衍生"

Substitute

"賺取".

3. Rule 6A added

After rule 6 —

Add

"6A. Rule 7 amended (drawings from a client account)

Rule 7(a)(iv), Chinese text —

Repeal

"告知"

Substitute

"通知".

4. Rule 8 amended (rule 9 amended (exceptions))

(1) Rule 8(1), Chinese text, new rule 9(2)(c)(i) —

Repeal

"告知"

Substitute

"通知".

(2) Rule 8(2), new rule 9(2A)(b), after "client account" —

Add

"without delay".

(3) Rule 8(2), new rule 9(2A)(c)(i), after "client account"

—

Add

"without delay".

(4) Rule 8(2), English text, new rule 9(2A)(c)(ii) —

Repeal

"should"

Substitute

"must".

- (5) Rule 8(2), Chinese text, new rule 9(2A)(c)(ii), before "4個" —

Add

"第".

- (6) Rule 8(2), Chinese text, new rule 9(2A)(c)(ii), before "5個" —

Add

"第".

5. Rule 10 amended (rule 10 amended (obligation to keep accounts))

- (1) Before rule 10(1) —

Add

"(1A) Rule 10(4), Chinese text —

Repeal

"告知" (wherever appearing)

Substitute

"通知".

- (2) Rule 10(1), English text, before "as are necessary" —

Add

"such cards or other permanent documents".

(3) Rule 10(1) —

Repeal

"or, as the case may be,"

Substitute

"any cards or other permanent documents or".

6. Rule 11A added

After rule 11 —

Add

"11A. Rule 12 amended (delivery of intimation and notification)

(1) Rule 12, heading —

Repeal

"intimation and notification"

Substitute

"written intimation etc.".

(2) Rule 12, Chinese text —

Repeal

"告知"

Substitute

"通知".

Schedule 2

[para. (b)]

Amendments to Accountant's Report (Amendment)
Rules 2012

1. Rule 3 amended (rule 2 amended (interpretation))
 - (1) Rule 3(1)(a), Chinese text, after ""指以律師或律師行名義在" —

Add

"銀行開立的往來或儲蓄".
 - (2) Rule 3(1)(a), Chinese text, after "牌照的" —

Add

"銀行開立的往來或存款".

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

MR DENNIS KWOK: Deputy President, in my capacity as Chairman of the Subcommittee on Five Sets of Amendment Rules made under Sections 73 and 73A of the Legal Practitioners Ordinance and Gazetted on 12 October 2012, I report to this Council on the deliberations of the Subcommittee.

The five sets of Amendment Rules are made by the Council of The Law Society of Hong Kong under sections 73 and 73A of the Legal Practitioners Ordinance with the prior approval of the Chief Justice. According to The Law Society, the main objectives of the Amendment Rules are to modernize the requirements for solicitors to account to their clients for interests on money deposited with them and to codify these requirements under the Solicitors' Accounts Rules. The Subcommittee supports the objectives of the Amendment Rules.

Deputy President, the Subcommittee has examined the principles that a solicitor must observe in handling client's money as stipulated in proposed new Rule 1A under the Solicitors' Accounts (Amendment) Rules 2012. According to The Law Society, these principles are drawn up with reference to the Solicitors' Account Rules of the United Kingdom. At present, the principles that a solicitor must observe in handling client's money are scattered in various rules made under the Legal Practitioners Ordinance and the Practice Directions issued by The Law Society's Council to its members.

The Subcommittee has sought explanation for the proposed requirement that a client account must be an account at a bank located and licensed in Hong Kong and the proposed waiver provision. Under the proposed waiver provision, The Law Society's Council may, on prior written application, waive in writing the provision relating to the location of a client account subject to the conditions that it may impose.

The Law Society has explained that past experience reveals that in the event of intervention by The Law Society's Council in a solicitor's mishandling of client's money, there may be problems with the access to the information on the client account concerned if the account is maintained at an overseas bank or an overseas branch of a bank licensed in Hong Kong. Hence, the imposition of the aforesaid requirement is in the interest of solicitors' clients, hence the public.

As regards the proposed waiver provision, The Law Society has advised that a solicitor shall not deposit a client's money in an overseas bank account even on client's instruction unless there is a waiver application, which will only be granted by The Law Society's Council on very good reasons.

In response to the comments of the legal adviser to the Subcommittee, The Law Society has agreed to make certain amendments to improve the drafting of the Amendment Rules. The Subcommittee supports these amendments, and the motion moved by the Secretary for Justice just now is on these amendments.

Lastly, the Subcommittee has noted that, in this instance, no information such as that provided by the Administration in its Legislative Council Briefs has been provided by The Law Society to this Council to explain the background of the Amendment Rules so as to facilitate Members' understanding of the amendments. In the regard, the Subcommittee would like to remind all policymakers in future that at the time of introducing subsidiary legislation of this

kind, they would need to provide the Legislative Council with adequate background information in the form of Legislative Council Briefs on the proposed legislative amendments, so as to facilitate Members in the scrutiny of the subsidiary legislation.

Those are my reports as Chairman of the Subcommittee. Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR JUSTICE (in Cantonese): Deputy President, I do not have anything to add.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): There are a total of three Members' motions for this meeting.

First Member's motion: Proposed resolution under the Legislative Council (Powers and Privileges) Ordinance.

I now call upon Mr Albert CHAN to speak and move the motion.

PROPOSED RESOLUTION UNDER THE LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) ORDINANCE

MR ALBERT CHAN (in Cantonese): Deputy President, I move that the motion, as printed on the Agenda, be passed.

Deputy President, this motion is about the setting up of a select committee to inquire into whether there is political intervention in the Digital Broadcasting Corporation Hong Kong Limited (DBC).

At its meeting on 26 October, the Panel on Information Technology and Broadcasting (the Panel) formally endorsed a motion calling on the Legislative Council to set up a select committee. The select committee proposed to be set up by the motion formally passed has four duties in total: First, to inquire into the reasons for the directors of DBC to discontinue their injection of capital; second, to inquire into whether there is any political intervention on the part of the Liaison Office of the Central People's Government (LOCPG) resulting in DBC's discontinuation of broadcasting services; third, to inquire into the reasons for the directors of DBC to refuse transferring shares; and fourth, to inquire into whether the discontinuation of injection of capital by the directors of DBC is caused by pressure exerted by the LOCPG or other political factors.

Deputy President, the proposing of the motion which was already passed is not groundless. The motion involves mainly a string of issues arising from DBC's discontinuation of broadcasting services. Two pieces of evidence clearly show that political intervention by the LOCPG has caused problems to DBC over the injection of capital and resulted in DBC's discontinuation of broadcasting services. The *prima facie* evidence has been established, too.

As such a sensitive and serious incident is involved, the People Power considers it necessary for the Legislative Council to follow up this issue. Certainly, I do understand that the relevant motion will not be passed in the House Committee given the overwhelming opposition by functional constituencies and royalists, so I am proposing this motion in my name today. I believe the chance of this motion being passed today is slim, too. Under such an abnormal political system in Hong Kong, any incidents involving the LOCPG will definitely be subject to manipulation by the power of "Hong Kong communists ruling Hong Kong". All motions against the LOCPG or relevant motions will definitely be vetoed. However, as a responsible Legislative Council Member who is duty-bound to safeguard broadcasting freedom and freedom of speech, I will definitely defy death to counteract political suppression.

Here are two pieces of evidence involving DBC's discontinuation of broadcasting services: First, the recording of the contents of conversation among DBC shareholders has been spreading virally across the Internet and cited in numerous reports, especially newspaper reports. It is clearly shown in the conversation involving Mr WONG Cho-bau that, in view of the LOCPG's dissatisfaction, he had a dispute with Albert CHENG over staff recruitment because the people whom "Tai Pan" wished to employ were slightly over the top. Compared with Mr WONG Yuk-man and me, these people are simply a case of David fighting Goliath. Compared with the criticisms made by Mr WONG Yuk-man and me in this Chamber, those made by people who are considered to be criticizing the LOCPG or the Government relatively fiercely are nothing at all. Our criticisms are 10 times stronger than those made by the so-called broadcasting professionals. Nevertheless, this fully shows that the LOCPG was obviously dissatisfied with some criticisms of the Government and this view obviously influences the major decisions made by individual shareholders, especially majority shareholders. Hence, such an influence obviously reflects and shows that there is *prima facie* evidence of the presence of political intervention.

Second, concerning the refusal to inject capital, we have looked up the past record of the incidents between May and October 2012 and found a string of apparently abnormal incidents because investors should pay attention to the capital and financial situation. Moreover, the injection of capital involves the operation of DBC. However, the relevant shareholders appeared to be unconcerned about their losses and quality of services, determined to ensure

discontinuation of all broadcasting services provided by DBC which was controlled by "Tai Pan".

We can see that the station launched its service on 15 May. On 3 August 2012, however, the four major shareholders, including WONG Cho-bau, David LI Kwok-po, Arthur LI Kwok-cheung and Allan WONG Chi-yun, refused to inject \$50 million as originally planned. Neither did they agree to sell or offer their shares. Their ultimate purpose was to force DBC into liquidation. It was also subsequently revealed that their wish was fulfilled. In the middle of August 2012, Albert CHENG wrote to the Commerce and Economic Development Bureau announcing DBC's official launch of broadcasting services.

On 10 September, the Court gave a formal approval to WONG Cho-bau to inspect DBC's accounting records; on 25 September, three shareholders, including Albert CHENG, Morris HO Kwok-fai and Ronald ARCULLI, agreed to either sell their stakes at half price to WONG Cho-bau or buy WONG Cho-bau's stakes at half price in an attempt to put an end to the disagreements among shareholders. Nevertheless, there was no response to or acceptance of the offer.

On 26 September, Albert CHENG, the head of DBC, received an interim injunction applied by WONG Cho-bau to the Court prohibiting him from disclosing every detail mentioned by the shareholders. On 28 September, various parties agreed to convene another urgent board meeting on 9 October to resolve the disputes. On 10 October, DBC's broadcasting services were officially discontinued. On 15 October, DBC's broadcasting services were resumed, with a number of hosts launching a seven-day voluntary broadcasting campaign without reward. On 16 October, the day following the launch of the voluntary broadcasting campaign, the head of DBC received a solicitor's letter from WONG Cho-bau's camp questioning the campaign might jeopardize DBC's interest. On 17 October, WONG Cho-bau applied successfully to the Court for a receiving order. On 18 October, DBC was officially taken over by Deloitte Touche Tohmatsu. On 19 October, the voluntary broadcasting campaign was conducted in the square off the Central Government Complex. On 20 October, Billy LAU Nam-kwong, a DBC employee, in a rare move staged a hunger strike against the unreasonable discontinuation of broadcasting services. On 21 October, the recording of a meeting held in May 2011 was uploaded onto DBC's Facebook, and the recording was circulated extensively on the Internet. Between 21 and 31 October, only music was broadcast on DBC.

We can see that this series of incidents is abnormal and gives the impression, even purely from the angle of commercial operation, that it was perpetrated to affect normal operation. What is more, Secretary Gregory SO was condemned and blamed by the public for his performance. Under the despotic power of the LOCPG, the Government can be described as evasive in the face of the issue of political intervention without any intention of governance to deal with this incident properly. Very often, it advances the principle of commercial operation as an excuse to evade its responsibility, thereby compromising the interest of the general public.

Deputy President, compared with all the other existing radio stations, DBC can be described as better in terms of the scope and quality of services, and popular. First, DBC has a total of seven channels, and a number of its programme hosts are heavyweights in the broadcasting industry, such as Gary NGAN, NG Chi-sum, Kelvin TANG, Billy LAU, LAM Yuk-wah and LI Kam-hung. The list goes on and on, but they are mostly heavyweights in such aspects as politics, culture, arts, broadcasting, and so on.

The programmes broadcast by DBC's seven channels, including Digital Melody, Digital Opera, Digital Money, Digital Wave, Digital WE, Digital Family and Digital Loud, are well supported by the audience in various strata. On 19 October, the very evening in which the campaign for resumption of broadcasting services was launched, more than 8 000 people gathered outside the Central Government Complex alone. It has also been reported that tens of thousands of people expressed support for DBC's resumption of broadcasting services. Some members of the public even hoisted placards that read "Goes DBC today, other media follow tomorrow". Concerning DBC's discontinuation of broadcasting services, the feeling, response and comment of members of the public are certainly totally different from those of Secretary Gregory SO. The vast majority of the people in Hong Kong, particularly DBC's listeners, feel that DBC was compelled to discontinue its broadcasting services due to political intervention.

When it comes to public support, in comparison with Radio Television Hong Kong (RTHK), Hong Kong's current official radio station, DBC has received 34 000 "likes" on Facebook within a short period of time, but RTHK has received only 9 109 "likes" on Facebook. The difference between the two is three times.

Over the years, the Government has spent such a large sum of money to operate RTHK. Judging from support in terms of the number of "likes" on Facebook — certainly it is just one of the platforms for expression of ideas — the support for DBC is three times higher than that for RTHK. Despite the popularity of this radio station, the Government merely stands by with folded arms in the face of this incident of enormous public concern and extremely strong political vector, saying that it will not intervene in the incident because of commercial principles. It is obviously an act of shirking its responsibility.

In particular, under the despotic power of the LOCPG, Hong Kong has no problems given the "one country, two systems" set-up, so long as the executive is willing to go down on its knees once the Central Authorities and the LOCPG press the button. All lackeys will go down on their knees, including those high-ranking and influential government officials in Hong Kong. When confronted with problems involving public interests, especially when such interests are, in a certain aspect, slightly related to or in conflict with the government officials and organizations of the Chinese side, government officials earning a monthly salary in excess of \$300, 000 will act so evasively that they are ludicrous and shameful.

When I threw down the gauntlet to Secretary Gregory SO in the Panel on Information Technology and Broadcasting some time earlier, he insisted that this incident did not involve any political intervention and refused to conduct any inquiries. In the past whenever major incidents occurred, particularly incidents of public concern, the Government would very often appoint serving or retired judges to conduct inquiries. In a proactive challenge to the Secretary at that time, I said that if he agreed to appointing former Chief Justice Andrew LI to take charge of the commission of inquiry and if the final conclusion of the inquiry indicated no political intervention, I would be willing to resign from office as Member of the Legislative Council to demonstrate my sincerity. But meanwhile, the Secretary had to make an undertaking because he believed that the incident involved merely commercial principles with no political intervention, such that if the conclusion of the commission of inquiry indicated that there was political intervention, he would have to take the blame and step down. I will not ask him to commit hara-kiri, though. As an accountable Bureau Director, he should be held accountable. Now, he is unconcerned about many matters, and neither is he responsible. Such behaviour is most infuriating.

Broadcasting is a most significant domain, most crucial to the well-being of the public, too. The number of radio stations in many parts of the world,

particularly West Europe, is surprisingly large. In comparison, the number of radio stations in Hong Kong is ludicrous and shameful. If we look at other places, we can frequently find that there are dozens of radio stations. On average, for instance, there is one community radio channel for every 400 000 people in Melbourne, and one channel for every 75 000 people in Hawaii, every 500 000 people in the United Kingdom and every 150 000 people in Taiwan respectively. If this standard is used for comparison, Hong Kong's average is 10 times that of other places. Hence, members of the public must come forward to fight for this broadcasting right.

A renowned academic in the United States once said, "A free press is not a privilege, but an organic necessity in a great society". Without such freedom, Hong Kong will be reduced to a government administered by quails, and society will only be gradually plagued by degradation, occupation by the enemy and depression.

Mr Albert CHAN moved the following motion:

"That this Council appoints a select committee to inquire into the discontinuation of sound broadcasting service by Digital Broadcasting Corporation Hong Kong Limited 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."

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, in connection with the discontinuation of broadcasting services of Digital Broadcasting Corporation Hong Kong Limited (DBC), I clearly explained the Government's stance and follow-up actions at the special meetings of the Legislative Council Panel on Information Technology and Broadcasting held on 26 October and 24 November. Just now Mr Albert CHAN has analysed all the developments of the incident from his own point of view, I would like to take this opportunity to reiterate a few key points to Members.

First of all, the Government's policy has always been to support the development of digital audio broadcasting and strive to enhance the quality of digital audio broadcasting services. On the basis of the aforesaid policy, radio services have been extended from the only AM/FM channels available in the past to the current digital audio broadcasting channels. The number of radio channels has increased from 13 in the past to more than 20 now, greatly increasing the platforms for members of the public to listen to information and express their views. This policy has not changed. The Government will continue to support the development of digital audio broadcasting services.

We have noted comments that the Government has done nothing other than watching the DBC incident from the sidelines. This allegation is incorrect. As I explained to the Legislative Council Panel on Information Technology and Broadcasting at the end of last month, since the appearance of reports about disputes among DBC shareholders, we have all along maintained close contact with the management of DBC. At the request of the company's management, we have met with it more than once. Since the incident, we have repeatedly written to DBC requesting it to give an account on the operation and matters related to compliance with the terms of the licence. In the letters, we also requested DBC to clarify the news that the company might cease operation. We have also repeatedly written to urge for the company's reply. To keep the public informed of developments and the follow-up actions of the Government, this Bureau has issued press releases on the matter for a number of times. I have also, on many occasions, met with the media in connection with the incident and attended interviews as well as radio phone-in programmes to talk about the follow-up actions of the Government.

As regards the Office of the Communications Authority (OFCA), it received a written notification in the afternoon of 10 October from DBC on matters relating to its cessation of operation as from 8 pm that day. The broadcasting service of DBC ceased at 8 pm that day. The OFCA immediately issued a letter to the company that evening to reiterate the licence requirements and request the company to provide details on the incident. In the afternoon of 12 October, the OFCA received a written notification from DBC that it would resume broadcasting on 15 October, and the service of DBC resumed at 7 am on 15 October. The OFCA immediately issued a letter to the company within the same day of receipt of the written notification to obtain detailed information on the resumption of broadcasting service, and remind the company of the need to comply with licence conditions and the Telecommunications Ordinance. DBC

notified the OFCA on 16 October that its resumption of broadcasting service would continue until further notice, and undertook that its service would comply with the relevant statutes, licence conditions and codes of practice. The OFCA again wrote to DBC on 15 October to inform the company that there was a *prima facie* case of a possible breach of licence conditions regarding the cessation of service between 10 and 14 October. The OFCA also wrote to DBC on 18 October to invite representations by DBC to the Communications Authority on the possible breach of licence conditions arising from its earlier cessation of broadcasting service. Subsequently, the OFCA issued another letter to the interim receiver of DBC on 19 October, requesting DBC to clarify press reports about it ceasing operation again from 11 pm on 21 October. Since the Court appointed Deloitte Touche Tohmatsu as the interim receiver of DBC in mid-October, the Commerce and Economic Development Bureau and the OFCA have also individually liaised with the interim receiver to follow up the situation of the company.

In addition, the Commerce and Economic Development Bureau and the OFCA have received a certain number of complaints and enquiries about the DBC incident. The authorities have arranged for making replies as soon as possible.

It is thus evident that the authorities have all along, in an appropriate and conscientious manner, closely followed up the developments from a regulatory angle and kept a close watch on DBC's compliance with the licence conditions and the Telecommunications Ordinance. In respect of DBC's cessation of broadcasting service from 11 to 15 October this year, the Communications Authority has recently ruled that DBC has contravened the provisions of its licence, and imposed a financial penalty of \$80,000 on the company. Regarding the earlier application by the interim receiver of DBC for temporary deviation from the programming requirements under the licence, the Communications Authority has decided to reject the application after consideration of the arguments and information submitted by the company. The Communications Authority has reached a provisional decision that DBC's deviation from the programming requirements since 21 October this year amounted to a breach of licence condition of a serious nature and that a sanction commensurate with the severity, nature and duration of the breach should be imposed on DBC in accordance with the law. The Communications Authority is inviting representations from the interim receiver of DBC in this regard, and will make a final decision taking into account the relevant representations. This shows that

the authorities have all along been carrying out their regulatory responsibilities in an appropriate and conscientious manner.

I must emphasize that the discharge of our regulatory duties in accordance with the licence conditions and the Telecommunications Ordinance does not mean that the Government should intervene in the disagreements among DBC shareholders. In this regard, we have repeatedly stressed that the disagreements among shareholders should be settled by commercial or legal means. It is inappropriate for the Government to play the role of professional mediator. I have also noted that the shareholders of DBC are resolving their disagreements by legal means. The Government has all along respected the independent operation and editorial independence of broadcasting licensees, therefore it would not interfere in their internal matters, because doing so would constitute a very dangerous precedent. I further wish to take this opportunity to clarify that, according to our records, the Government has not intervened in the internal affairs of individual broadcasters in matters related to the disputes among ATV shareholders in 2010 and the broadcast rights of the London Olympic Games.

Deputy President, the authorities have all along been committed to carrying out their regulatory responsibilities. The incident is being followed up by the Communications Authority according to established procedures in accordance with law. We believe there is no need to otherwise follow up the matters that can be handled under the existing regulatory framework or legislation. In fact, this would overlap with and affect the work of the Communications Authority. Most importantly, as the DBC shareholders are resolving the company's management problems through legal proceedings, it is definitely inappropriate for other parties, including the Government, to intervene. I emphasize that the Government respects the independent operation of media organizations and should not intervene in their internal affairs; otherwise, the independence and autonomy all along enjoyed and cherished by our media organizations would be undermined. This is a matter of principle. This principle should be respected by the legislature. Therefore, we hold that the Legislative Council should not set up a select committee in relation to DBC's discontinuation of its broadcasting services, for otherwise it would set a very bad precedent of intervening in the internal operation of media organizations.

Deputy President, I wish to listen to Members' speeches first and give a supplementary response later. However, Deputy President, earlier on Mr Albert

CHAN made a comparison between DBC's services and those of Radio Television Hong Kong (RTHK). I know that Mr Albert CHAN likes the programmes of DBC very much, but I cannot say that the services of RTHK play second fiddle to them. Deputy President, RTHK has been broadcasting for more than 80 years. It is recognized as not just one of most credible electronic media, but also one of the radio stations with the highest listener ratings. Therefore, the services of RTHK are superb in my view. Thank you, Deputy President.

MR CHARLES PETER MOK (in Cantonese): Deputy President, I support the resolution proposed by Mr Albert CHAN to appoint a select committee under the Legislative Council (Powers and Privileges) Ordinance to inquire into the discontinuation of sound broadcasting service by Digital Broadcasting Corporation Hong Kong Limited (DBC). We have debated on this topic a number of times and, irrespective of Members who are for or against the question, I am sure their position will not change too much today. Last month the Panel on Information Technology and Broadcasting passed a motion to support the appointment of a select committee. Unfortunately, when the motion was submitted to the House Committee, it was negatived because Members from the pro-establishment camp came to the defence of the Government. When this question is tabled before the Council meeting today, I will claim a division when the resolution is put to vote. This is because there may be Honourable colleagues who will not do a good gate-keeping job to uphold the principles of "one country, two systems" and "a high degree of autonomy" in Hong Kong, and so I wish to put all these down on record.

In this DBC saga, what should be inquired into is whether the LOCPG has ever intervened in local politics. The principles of "one country, two systems" and "a high degree of autonomy" are basic tenets underlying the Hong Kong SAR of the People's Republic of China. As such, the allegations are very serious indeed. They will also erode people's confidence in "one country, two systems" and "a high degree of autonomy". As a matter of fact, we can see that the LOCPG is increasingly making its influence felt in the affairs of the SAR. On the day after being elected, LEUNG Chun-ying went to the LOCPG to thank them for the votes he got. In the boat collision incident off the Lamma Island, we could see that officials from the LOCPG went with the Chief Executive for an inspection of the rescue efforts. All these signs make the people worry that a

second centre of power has formed in Hong Kong and as it is commonly called, the Western District is governing Hong Kong. These fears are not unfounded. What makes people worry all the more in this case of DBC is not only whether or not the LOCPG has any part to play in this saga but because the party involved is a media company and public interest and the public's right to know are at stake. Moreover, this has an effect on the freedom of the press and the freedom of speech which are the core values of Hong Kong.

Honourable colleagues, we know deep in our hearts that when Hong Kong is compared with other cities on the Mainland, we have the freedoms of the press and speech and these are what we treasure. Any citizen can speak out and scold the Chief Executive for being a big liar in the incident of the illegal structure in the enclosed room in his mansion, or the Secretary for Development for acting shamelessly in owning sub-divided units or who drink drove, or the Member of the Executive Council who jumped the gun in selling his flasks before tax measures came into force for lack of integrity. Even as the media or the public are making criticisms all the time, mobilizing the masses to come out and go on a march on New Year's Day that calls for the Chief Executive to step down, we do not have any worry that we will be silenced or made to disappear. On the other hand, any person who opposes me or levels any criticism at me can also enjoy the same freedoms that I enjoy. But with respect to the DBC incident, I am surprised to note that there are claims that programmes aired by DBC have slammed the SAR Government and the Central Government too harshly and so these officials from the LOCPG wanted to see DBC disappear.

Similar suspicions of political intervention also emerge in the case of the granting of a new licence for a free TV. This is a blatant challenge to the core values and bottomline of Hong Kong people. More seriously, this is an attack on our long-standing faith in the neutrality of the broadcasting and regulatory agencies, hence causing enormous damage to our international reputation. We can see that a month ago there were thousands of people who went to the Government Headquarters to voice their support for DBC and some protesters even went on to stage a hunger strike. It is sad that the Government pretended not to see all these. Of course, since the Chief Executive, LEUNG Chun-ying, is himself part of the second power centre led by the LOCPG, how can we expect him to probe into his own boss?

Since the executive authorities have refused to intervene, the Legislative Council is obliged to probe into the matter if it is of the view that something dubious is going on because it has got monitoring, checking and gate-keeping roles to play. The Council is also duty-bound to defend Hong Kong's core values and protect our freedom of speech. I remember that in the last meeting of the House Committee, many Members thought that the Council should not interfere in this matter because the matter is a commercial dispute. I would like to respond to this view briefly. In Hong Kong and with the sole exception of Radio and Television Hong Kong, all media corporations including newspapers, television and radio stations are all private corporations operating under commercial principles. Many of them are even listed companies and the shareholders only have business considerations in mind, and what they care about is making money instead of editorial independence. The shares of these media companies can be traded and share rights can be transferred. Despite this, we will not consider media companies as purely commercial firms because they have got a public mission to fulfil. They are using public resources and there is a firewall between their investors and the editors, underpinned by the need to maintain editorial independence.

Even if we leave aside the role played by the LOCPG in the DBC saga, we can still see something unusual about it. The shareholders of DBC only hold the share rights. They do not inject funds or trade their shares and rights. They are in some way starving their company to death. This totally defies commercial principles. How can we say that this incident is nothing but a commercial dispute? DBC continued to operate despite the lack of injection of funds from its shareholders, nor could it find any new shareholders to invest in it. The result is that the company just came to a standstill and vanished. Its section of the digital broadcasting spectrum is just left idle. I do not think I need to talk about the negative effects of this on digital broadcasting in Hong Kong. Looking at the process and results of this incident, can we really see and explain everything from a commercial perspective? As this is a media company, the public has an impression that the whole incident is very suspicious.

Deputy President, some Honourable colleagues say that the Legislative Council (Powers and Privileges) Ordinance is a weapon of last resort and we should not deploy it lightly. I would say that since it is a weapon, it should be used when the time is right, such as on this occasion. In this DBC incident, there is a need to invoke the Legislative Council (Powers and Privileges) Ordinance to probe into the matter because the parties concerned have made it

clear that without any summons issued by the Legislative Council, there is some information that they cannot disclose. Regrettably many Members from the pro-establishment camp have attacked the persons concerned, saying that they lack integrity and have twisted the facts. Hence there would be no need to undertake an investigation. This is really not justified because they are passing a judgment before a trial is heard. They are confusing the people time and again. And they are trying to cover up some facts which may come to light. Hence they are depriving the people of their right to know the truth.

Deputy President, what we treasure in Hong Kong are our freedom of speech and our international reputation that we have the freedoms of broadcasting and of the press. We cannot afford to be silent in this matter. This Council is the last avenue where we can find the truth in this case of DBC. As Members we have a moral responsibility to the people in invoking the Legislative Council (Powers and Privileges) Ordinance to appoint a select committee and dig out the truth.

Deputy President, I so submit.

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of the resolution proposed by Mr Albert CHAN to appoint a select committee under the Legislative Council (Powers and Privileges) Ordinance to inquire into the discontinuation of sound broadcasting service by Digital Broadcasting Corporation Hong Kong Limited (DBC).

Deputy President, I believe you will recall that it has been mentioned in this Chamber many times that to our surprise Hong Kong is like North Korea. What is being referred to is the number of radio stations in Hong Kong. Deputy President, you have been travelling around the globe and earlier on an Honourable colleague said that in other countries, the number of radio stations is simply stunning. But in Hong Kong, we only have Radio Hong Kong, the Commercial Radio, Metro Radio and some time ago we used to have DBC as well. But now it is really a mess. The new radio is dead and lifeless. Deputy President, I am not saying that you are dead and lifeless. I am saying that the new radio station is no longer living.

Reviewing the developments of the whole incident, when did Mr Albert CHENG's company, the Wave Media Limited, hand in its application? It was back in January 2008. In October 2009, he said that he would use digital sound broadcasting technology and seven channels would be set up in the hope of starting to broadcast in November 2010. In March 2010, their digital radio station was granted a licence valid for a period of 12 years. When did broadcasting formally begin? It was on 21 September this year. We can just take a look. It has been almost five years from the time when an application was made in January 2008 to September 2012 when a licence was granted. Deputy President, you are a businessman. If Hong Kong is like this, would you say that there is a friendly and good business environment in Hong Kong? I have not finished talking about all this. The radio station started to broadcast on 21 September. When did it stop broadcasting? It was on 10 October. It had only broadcast for some 10 days. Would you not say that this is most unusual? How come? When these people have invested so much money, the radio station just folded in some 10 days.

So Deputy President, some Honourable colleagues have said earlier that the Panel on Information Technology and Broadcasting of this Council supported the idea of invoking the Legislative Council (Powers and Privileges) Ordinance to probe into the matter. But in the House Committee, you people from the royalist camp and those pro-Beijing people had enough votes to oppose it. Therefore, Mr CHAN decided to propose a resolution himself. However, we all know that this proposal is unlikely to pass because you people are all there and when this motion is put to the vote later, it will be negated.

But the public will certainly ask, why does a radio which is so popular with the listeners have to stop broadcasting? Deputy President, on 24 November, the Panel on Information Technology and Broadcasting spent a whole day holding a special meeting. Many members of the public came to make their views known. They pleaded fervently for their cause. They said that they did not like listening to other radios. I think we all know the reason. They said that this radio station had so many programmes and they were welcomed by people of either sex, all ages and diverse backgrounds. They loved to listen to that radio. But they were very worried and disappointed because the radio was about to close down. They were dismayed to see the Secretary only stay there for a couple of hours in the meeting and then left. The people came to that meeting to air their grievances and they hoped that the Secretary could intervene and help. But what did the Secretary do? Deputy President, the Secretary has cited those two

examples again earlier. One is the case in March 2010 when there were changes to the share rights of the ATV. At that time, the then Secretary Rita LAU went to ATV and made an inquiry. She reminded the ATV that it had a responsibility to maintain its daily operation and ensure that its programmes were not disrupted. The people who came to the Council on that day said that the Government had the responsibility to demand the radio station to maintain its regular service. But the Secretary did not see the point. The people were not trying to ask the Secretary to act as a peacemaker in this matter. "Tai Pan" and the others did not want this either. They were just asking the Secretary for help and they hoped that the Secretary could urge the relevant parties to sit down for discussions. Why did they want this? It was because in this July the Secretary had offered his help so that the relevant parties could sit down for discussions. With whom the Secretary was discussing matters on that occasion? They were people from Cable TV, TVB and ATV. They discussed the broadcasting rights concerning the Olympic Games. We could see the Secretary on the TV for a few days while he was moving about busily and trying to offer help. He was doing that because many people would want to watch the Olympic Games. And the same applies to programmes from DBC. Do members of the public think that the Government is to blame? It is only after so many years and so much hard work that a licence is granted to that radio station. After so much investment made and despite the immense popularity of the radio's programmes, the radio has to shut down. Why does the Government not do something about it? Deputy President, I can say that the public is furious.

Mr LAW Yuk-kai, the person in charge of the Hong Kong Human Rights Monitor, came to the Panel on Information Technology and Broadcasting on 24 November to express his views on that matter. He reminded the authorities that Article 4 of the Basic Law states that "The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region in accordance with law.". Deputy President, what are the "rights and freedoms" mentioned here? LAW Yuk-kai said this refers to the right and freedom of the Hong Kong people to receive information and there should be a diversified environment where not just three radio stations are allowed to broadcast but there are also other channels available and stations are not engaged purely in commercial activities. I am sure the Secretary has also admitted on other occasions that the radio station should not be seen engaging purely in activities that make money. So in this respect, there is dereliction of duty on the part of the authorities because nothing has been done to ensure that the people can have access to more information through various channels. Moreover, the authorities may have even helped make these

channels disappear. So Deputy President, we are very angry with the authorities.

Deputy President, perhaps you would be more interested in doing business. There is this organization called Hong Kong Digital Radio Development Association and its representative is called Mr Sam HUI Kin-sang. Mr HUI is a businessman. When the authorities said that there would be digital broadcasting, Mr HUI then invested in the production of such digital radios. I have heard from other people that at first such radios were quite expensive. Then a lot of these radios, that is, tens of thousands, were produced. Mr HUI said that at first, 10 such radios were sold every day. But now not even one is sold in 10 days. He says that he does not know what to do now. As the saying goes, he is caught between two stools. He asks the authorities what he should do. The tens of thousand radios are just one thing. What about the prospects of digital broadcasting? We had been pressing the authorities for years and at last a licence was issued. But when it has come to such a tragic end, can we not be angry about it? A while ago a colleague said that many people could not take it. They do not agree with the Secretary that this is only a commercial incident. Deputy President, when there is intervention from the LOCPG, how can this be still called a commercial incident? Deputy President, I do not care whether you like to hear this or not. This is something very political. Someone has produced a tape recording, in which someone named LEE Wai-ling for being too outspoken and said that he did not like her. I do not know what other people have been named. I really think that the LOCPG is way too much over board. Deputy President, you may say that it is not known whether this is true or just a fake. Or may be someone has tampered with the recording. It is precisely because of that that we want to investigate the incident. Is there any political intervention? Many people even say in the Panel meetings that this is political censorship. This kind of action has not just silenced the digital radio. I believe it is something which Beijing loves doing, that is, to issue a warning to chill other people, to make them feel scared. They will know that this is something "Grandpa" does not like. If this sort of thing goes on, I would think that other radios may eventually disappear as well.

Deputy President, we always say that there is no democracy in Hong Kong but we do have a bit of freedom and the rule of law. But when a radio station stops broadcasting only after some 10 days, despite the great amount of investment made, can we not say that something has gone wrong? Deputy President, can you say to any businessman anywhere that this is the way to do

business in Hong Kong: you will need four or five years to apply for a broadcasting licence but the broadcasting discontinued after just a few weeks. What kind of message do you think this incident will send to the business community? I used to be the Vice-chairman of the Business Facilitation Advisory Committee and if this kind of practice is called business facilitation, this will scare the business sector to death. Unless the authorities will say, you may do business here, but if it is something which Beijing does not permit or does not permit to say, then nothing can be done about it. If you do not obey, then I will revoke your licence.

Deputy President, I used to think that a consensus has been reached in this Council and we all treasure the basic human rights and freedoms in Hong Kong. If a radio station is opened and its programmes may contain things that may scold other people, it should be okay. Things like that should be there in a free society. But why is the radio silenced? Why does the LOCPG have to intervene?

So, Deputy President, we have to conduct an inquiry. Now we are not demanding that a conclusion be reached in a short time. But since someone has disclosed these tapes and the Secretary said that he had listened to them for somebody had taken these tapes to his office and let him listen to them. Deputy President, we have to issue a warning to the LOCPG as well. Do not think we have succumbed to intimidation. I do not have a Home Visit Permit, but I will also voice out my grievances. Maybe I can never return to the Mainland for the rest of my life, but that is not my problem. For it is the Central Government which deprives me of my right to do so. Shame on it.

Deputy President, we must state clearly the freedoms enjoyed by the people of Hong Kong. These include the freedom to scold other people. Certainly, we are against the use of vulgar language. And we should have the freedom to make criticisms in all aspects, a right which the authorities should protect. When a radio station in operation suddenly vanishes and when all the investments are gone, what should be done about the welfare of the hundreds of staff and their families? Deputy President, do you still remember the AW Sin case a long time ago? At that time, the former Secretary for Justice did not want to press charges against *Sing Tao* newspaper because she wanted to help the staff and their families and she did not want to see their living affected. How ironic it was.

The incident this time around involves a lot of public interest. But the Secretary does not care about them. Someone has produced thousands of radios and he has called in and said that there are still tens of thousand radios in the warehouse unsold. What should be done about it? What about the future of digital broadcasting? Or have we got the message and, that is, if we still insist on it, there will be no broadcasting in the future?

Deputy President, on this subject of broadcasting, now that a licence for free TV is not yet granted and there are rumours that this is related to political intervention. It is feared that the new licensee will do something to the dislike of the giant consortia and Beijing. If Hong Kong has come to this pass, it is really like what Mr Charles Peter MOK has said, that not much of "one country, two systems" and "a high degree of autonomy" are left. And to top it all, the deputy director of the Hong Kong and Macao Affairs Office, ZHANG Xiao-ming, has recently published a long article in *Wen Wei Po*, stating that something should be done to fix the legislative powers and many other areas in Hong Kong.

Deputy President, when I link all these events that have happened together, you will certainly know that many people are worried that the Central Government may think that the people of Hong Kong have too much freedom under the principles of "one country, two systems" and "a high degree of autonomy". They fear that the Central Government may have lost its patience and so it wants to fix us. And so DBC radio owned by "Tai Pan" is made a sacrifice. It may turn out that not only "Tai Pan" but also others are sacrificed as well.

For this reason, Deputy President, we must speak out. It is the responsibility of the authorities to defend the human rights and freedoms of Hong Kong people. Now in this Council, we hope that Members who oppose this resolution can rise and talk about why they think this kind of worries in many people are unjustified or if these Members know from the outset that this is what is like with "one country, two systems", something we should have known a long time ago. But that is not what we think. We think that the Central Government has made a solemn pledge that under "one country, two systems", Hong Kong can enjoy "a high degree of autonomy" and there will be "Hong Kong people ruling Hong Kong" and the freedoms we enjoy in our lifestyle will remain unchanged for 50 years.

Deputy President, this radio station owned by "Tai Pan" has been silenced and this is a challenge to "one country, two systems". So Secretary, I do not think the people of Hong Kong will let you get away with this. I hope the authorities can give an account of the incident and explain to us why a radio station is silenced after broadcasting for some 10 days.

DR ELIZABETH QUAT (in Cantonese): Deputy President, the Democratic Alliance for the Betterment and Progress of Hong Kong opposes the proposal to set up a select committee under the Legislative Council (Powers and Privileges) Ordinance (Powers and Privileges Ordinance) to inquire into the discontinuation of broadcasting service by DBC. Following the dispute among shareholders of DBC, some shareholders were unwilling to inject capital into the company. Subsequently, with problems in management and a shortage of funds, DBC eventually had to cease its broadcasting service. In my view, these are all commercial disputes which should be resolved by the shareholders of the business organization. There is no reason for intervention by the Legislative Council.

Some shareholders of DBC consider that the dispute among shareholders which eventually forced the company to discontinue its broadcasting service is the result of an attempt to wipe out the company by the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG), thinking that this is political interference. Some time ago, some audio recordings alleged to be recorded during Board meetings of DBC were released as proof of political interference. Let us not talk about the authenticity of the recordings and even if the recordings are true, they are merely discussions between certain shareholders and in these recordings, some people had expressed some ambiguous views on staffing matters or the buying and selling of shares. How could this be interpreted as evidence of an attempt by the LOCPG to wipe out the radio station?

Furthermore, Mr Albert CHENG himself cannot provide clear confirmation of the dates of the audio recordings. If we categorically assert that DBC is subject to political suppression merely based on audio recordings which come from an unknown source and the contents of which lack clarity, is it not too frivolous to come to such a conclusion?

DBC was granted a licence in March 2011, and it took more than a year from making preparations for the launch of service to the formal commencement of broadcasting. If it was truly subject to political suppression, why did Mr Albert CHENG not say so but make this claim only recently when there was a dispute among shareholders and some shareholders refused to make further capital injection? Has the so-called political suppression happened all of a sudden only recently? Is it that political suppression does not exist if capital is injected whereas refusal to inject capital amounts to political persecution? With regard to the leakage of the audio recordings, I would consider it terrifying if the recordings are true because what had been discussed at the Board meetings should not be casually disseminated without the consent of all parties involved as the recordings may contain commercial secrets and also involve privacy.

Now that when shareholders are unwilling to make further capital injection into the company, some clips of audio recordings that are said to be recorded during the Board meetings appeared in society and the contents of the recordings happen to pinpoint a shareholder who is unwilling to make further capital injection. Is this blackmail or revenge? If the other party knows nothing about the recordings, the person who purposely made the recordings was setting up a trap for the other innocent party. If a person employs this means when a disagreement arises, who will dare to do business with this person or feel at ease in doing business with him in future? Hong Kong is an international commercial city. If the audio recordings of Board meetings will be released whenever disputes arise among shareholders, who will dare to do business in Hong Kong?

There can be a host of reasons for disputes to arise among shareholders of a company. The decision of individual shareholders on whether or not to further inject capital into a company can also depend on a diversity of reasons. A shareholder has freedom so long as he acts lawfully. As an international commercial city, Hong Kong must respect and defend lawful commercial operation as well as the rights and freedoms of individual shareholders. Will the hasty intervention by the Legislative Council and the Government in commercial disputes affect Hong Kong's rule of law, freedoms, human rights as well as Hong Kong's image as the freest business community or commercial city? Will international investors be deterred from making investments in Hong Kong?

At present, all conspiracy theories are only based on hearsay, and there is primarily no evidence to prove interference in DBC by the LOCPG. The

Legislative Council cannot invoke the Powers and Privileges Ordinance to effect intervention and conduct an investigation merely on account of some unsubstantiated rumours. Without sufficient justifications, intervention by the Legislative Council as a political force in the operation of a business enterprise will set a very bad precedent. In the event of disputes among shareholders of other business organizations in future, if a party to the dispute invites the Legislative Council to lend a helping hand on the ground of persecution by the Government, should the Legislative Council take up the cudgel for each and every company or shareholder?

A strange phenomenon that I have noticed in recent years is that Members will propose the setting up of a select committee under the Powers and Privileges Ordinance to conduct an inquiry whenever there is an issue of public concern in society. This seems to have become a ritual. In fact, the Powers and Privileges Ordinance is an "imperial sword" that must be deployed carefully and cannot be abused.

Some Members said earlier that the DBC incident has jeopardized not only the freedom of speech, freedom of broadcasting and freedom of the press in Hong Kong, but also the international image and the core values of Hong Kong, and that even the "one country, two systems" has been challenged. The truth is that disregarding whether or not there is the DBC incident or how this incident will develop in future, the core values of Hong Kong will not change. The freedom of speech, freedom of broadcasting and freedom of the press will remain unchanged. Hong Kong people can still speak their minds freely and express their opinions, and we can still work in concert to defend "one country, two systems" so long as Members in this Chamber wish to do so.

To conclude, there is basically no sufficient evidence or reasons so far to justify intervention by the Legislative Council to conduct an investigation into the DBC incident. The Legislative Council should not casually draw the "imperial sword" and interfere in commercial disputes; nor should it causally lend a helping hand to any business organization. For these reasons, I oppose Mr Albert CHAN's motion.

Deputy President, I so submit.

IR DR LO WAI-KWOK (in Cantonese): Deputy President, the theme of this motion debate is to seek the approval of this Council for the appointment of a select committee and authorizing the committee to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (Powers and Privileges Ordinance) in conducting an inquiry into the discontinuation of sound broadcasting service by Digital Broadcasting Corporation Hong Kong Limited (DBC) and related issues. I think we should first clarify some fundamental principles and facts, or else the debate will easily be stripped of any real meaning.

Many people have likened the Powers and Privileges Ordinance to an "imperial sword". An "imperial sword", so to speak, is a symbol of supreme powers. In reality, we should not underestimate or neglect the importance of the Powers and Privileges Ordinance. This Ordinance comes from Article 73 of the Basic Law and provides an important basis for Members of the Legislative Council to monitor the administration of the Government. Article 73(10) expressly provides that the Legislative Council or its relevant committees can summon any person to testify or produce any document in the possession or under the control of such person. Therefore, it is only when an incident is considered by a majority of people as involving significant public interest and requiring clarification of the surrounding circumstances and when it is impossible to follow it up in depth through general procedures that the use of this "imperial sword" to conduct an investigation is considered necessary and appropriate.

Is it necessary and appropriate for the Legislative Council to use this "imperial sword" to inquire into the DBC incident? It is difficult for me to conclude that there is a *prima facie* case at least judging from the developments at the present stage. In fact, DBC is, after all, only an enterprise. Its operation does not involve the use of public coffers; nor is there sufficient evidence to show that the discontinuation of its sound broadcasting service involved interference with public powers.

As regards the dispute among shareholders of DBC on the injection of capital, it is entirely a matter of internal operation of the company. Whether or not shareholders are willing to inject capital is not only a commercial decision but also a personal decision and choice of shareholders. In this free market of Hong Kong, there are people making such decisions all the time. When it comes to the reasons of individual shareholders of a business enterprise for ceasing capital

injection, please tell me based on what justifications and in what way the Legislative Council can intervene in such a matter and conduct an inquiry into it. What concrete results can possibly be obtained from such an inquiry? In fact, when this proposal was raised for discussion in the Panel on Information Technology and Broadcasting, I already questioned how, for the reasons that I have just stated, we could possibly conduct an inquiry to find out the reasons for the cessation of capital injection by its directors, which was proposed to be a task of the select committee. This is indeed questionable.

Some people think that DBC is not an ordinary business enterprise but a broadcaster and so, an investigation should be conducted in the direction of whether political interference is involved. But a puzzling point is that after the dispute among shareholders of DBC was made public, there have been repeated calls for government interference or intervention by the Legislative Council. Does it reflect that people who made this demand have adopted a double standard for political interference in the media? Hong Kong has so many broadcasting and media corporations, and if we grew accustomed to elevating disputes among shareholders to the political plane based on some rumours and questioning that their decisions are the outcome of political interference, and once such a precedent is set, will the Legislative Council not be heavily burdened by having to set up select committees for all these cases in the future?

Deputy President, the main duties and functions of the Legislative Council are to enact legislation, monitor public spending and monitor the Government. Is there another more suitable organization for handling matters relating to DBC? The answer is yes. As we all know, there is the Communications Authority (CA) in the SAR Government. The CA is a statutory regulatory authority responsible for overseeing compliance by licensed broadcasting organizations with the relevant legislative provisions and licence conditions by virtue of the powers conferred on it by the law.

DBC has since September gone through a series of incidents. Its broadcasting service was formally launched on 21 September and ceased on 10 October. It was later resumed on 15 October and finally, from 11 pm on 21 October, DBC's broadcasting service was limited to the playing of music. It has been learnt that throughout the process, the CA has all along maintained contact and communication with DBC and repeatedly asked DBC to undertake that its service would comply with the relevant statutes, licence conditions and

codes of practice. The CA also reached a decision that DBC was in breach of its licence conditions arising from the cessation of its service between 10 October and 15 October and imposed a financial penalty of \$80,000 on DBC. All these show that the CA has been following up the developments of the incident. What the Legislative Council should and can do now is to monitor whether the relevant government departments and officials have handled the related matters in accordance with the established procedures and whether they can give play to the functions expected of them. Therefore, there is no substantive justification for this Council to set up a select committee at this stage to unduly and inappropriately intervene.

According to media reports today, the founder of DBC has filed a petition to the Court for an order to protect the interest of small shareholders by ways other than liquidation under the Companies Ordinance, including an order for acquisition of the shares of both parties. Given that judicial proceedings are now involved in the DBC incident, it is all the more inappropriate for this Council to intervene in this incident by way of a select committee at this stage.

I believe that unnecessary disputes can be avoided so long as some fundamental principles and facts are clarified. More importantly, we must define the powers and duties of the Legislative Council, government departments and other statutory bodies, so that they can perform their respective roles and duties accordingly.

Deputy President, I so submit.

MR RONNY TONG (in Cantonese): Deputy President, first of all, I declare that I have a direct pecuniary interest in this incident. I will withdraw from the meeting during the vote to be taken later on.

I originally was not prepared to speak today, but I wish to take this opportunity to make some clarification after all. Deputy President, the Secretary has said by citing my words on various occasions that the incident of Digital Broadcasting Corporation Hong Kong Limited (DBC) is purely a commercial dispute. Deputy President, I have never said so. Although the dispute among shareholders of DBC is a commercial dispute, if the importance of investigation at a political level is dismissed on the pretext of commercial dispute, this would

undermine the functions and dignity of the Legislative Council, just as a number of Members said earlier on.

Deputy President, Dr Elizabeth QUAT rose to ask whether there is proof for alleged interference in DBC by the LOCPG in Western District. She said that this should be debated in the Legislative Council only when the allegation is substantiated. Deputy President, I think that remark puts the cart before the horse. If the allegation is substantiated, it would be unnecessary for us to invoke the Legislative Council (Powers and Privileges) Ordinance, and it is precisely because there is *prima facie* evidence that an investigation is necessary to find out what happened in this incident and ascertain whether the allegation is true or not. Deputy President, if the LOCPG has really interfered in this incident which seems to be a commercial dispute on the surface, Members can imagine how serious this would be, for this would be a violation of the "one country, two systems" principle enshrined in the Basic Law, or the rule that "river water does not intrude into well water", so to speak.

At the specific level of constitutional law, Article 22 of the Basic Law clearly provides that "No department of the Central People's Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.". Radio affairs in the Hong Kong Special Administrative Region should certainly be administered by Hong Kong on its own. If there are people exerting political pressure to deprive a radio station of its rights to freedom of the press and freedom of speech, and if colleagues in the Legislative Council even consider that an investigation should not be conducted until the allegation is substantiated, I think this would be utterly disappointing and even laughable.

Deputy President, the Legislative Council has conducted inquiries into many major incidents before. These incidents can also be described as "commercial disputes". Take the substandard-piling works incident as an example. On the surface, this incident was only a dispute between the property developer and the contractor who insisted on their own views when uncertainties were found in the contract signed between them. Why should the Legislative Council conduct an inquiry into it? Likewise, the incident of the airport chaos was, on the surface, a commercial dispute arising from different understandings of the contract between the Airport Authority and its contractors or a breach of the spirit of the contract. Why should we inquire into it? Deputy President, the

Legislative Council should not adopt a double standard and evade politically by sensitive issues. This is not the attitude expected of Members; nor is this the spirit we should uphold in fulfilling our accountability to society.

Thank you, Deputy President.

MS CLAUDIA MO (in Cantonese): Deputy President, the comments made by Dr Elizabeth QUAT on behalf of the DAB just now really sent shivers down my spine because her tone and the arguments presented by her sounded even more bureaucratic than those of bureaucrats, even more government-like than the Government. She queried what could be investigated given the lack of concrete evidence. However, if it is suspected that an animal is ill-treated, we would also make a report to the police and request the police to investigate despite the lack of concrete evidence. At present, not only has she ruled out any investigation, she even accused me of "making a false report", so such a claim is totally illogical.

What is more, Dr Elizabeth QUAT is the Deputy Chairman of the Panel on Information Technology and Broadcasting, so the more one thinks about this, the scarier this is. She said that the audio recording that had been leaked was obscure in meaning, but this is precisely where the problem lies in. Since it is obscure in meaning and not detailed enough, we have to call meetings, so that a select committee established according to the legislation on powers and privileges can carry out an investigation in earnest by summoning the people concerned and asking them what they really meant when making those remarks at that time.

Dr Elizabeth QUAT also queried if the lack of money proved that there was political oppression, whereas the existence of the same meant otherwise. From the commercial point of view, this is indeed the case. Now, a kind of commercial conduct that is totally unreasonable has occurred, with the people concerned not buying, selling or injecting capital. Then, some allegedly factual evidence has emerged and the person concerned made clear that he had made enquiries with the "Western District" and learnt that something was not all right. Can the Government just turn a blind eye and a deaf ear to all this?

When it comes to broadcasting and the mass media, there is surely such a thing as the freedom of information and it is all the more incumbent upon the

Government to enact legislation on the freedom of information. However, before such a piece of legislation can be put in place, of course, we also understand that there are matters that are official secrets. However, even so, in the Chief Executive Election, one of the candidates still fully disclosed, in a live broadcast, some information of the Executive Council that should have been kept confidential. But why were no questions asked about this? It is accepted that the principles of confidentiality and collective responsibility should be observed in respect of the information concerned.

Deputy President, major public interest is definitely at stake in this incident and it is absolutely incumbent upon the Legislative Council to discharge its intrinsic duties of watching over the Government's handling of the incident relating to DBC and the indifferent attitude displayed by it. I fully understand that the whole Government, from the Secretary, through his superiors to the people at an even higher level, all stressed that this is a dispute among shareholders and that the Government should not intervene in a dispute among shareholders. I can also imagine what comments the Secretary would make later on. He would certainly say that since Mr Albert CHENG has filed a case or made a petition in the Court to demand capital injection or recourse to some kind of commercial action, this matter has entered a judicial process, so it is all the more inappropriate for the Government to intervene, and that it would be most preferable if the Legislative Council does not carry out any investigation, so on, so forth.

Of course, the Court would make a ruling on a case according to the law but this is purely to do so from the angle of commercial law. What we are talking about now is this suspected black hand called the "Western District". The "Western District" has brought a great deal of political element into this matter. On the entire controversy surrounding this political black hand, the Government has adopted the attitude of total disregard and it has indeed washed its hands completely clean of the matter by distancing itself from it, citing commercial factors on the one hand and judicial considerations on the other. Do you think that it can really be like this? Members may as well ask, in all honesty, if this matter really has no political element whatsoever in it.

Another argument is that Mr Albert CHENG courted trouble because the shareholder involved in this issue, that is, that person who would not buy, sell or inject capital, said that Mr Albert CHENG had always known that he was a

delegate of the Chinese People's Political Consultative Conference (CPPCC). What does this remark mean? Does anyone mean that so long as one is a CPPCC delegate, one can refuse to honour the commercial undertakings that one made? What kind of argument is this? Moreover, some people also hold that it was Mr Albert CHENG who placed the wrong bet by inviting a CPPCC delegate to become a shareholder.

Deputy President, the Legislative Council must defend Hong Kong's core values, including the freedom of the press and the freedom of broadcasting. Now that all of us can see how this deck of cards is like, may I ask who dares come forward, stand tall and declare that the controversy relating to DBC has no political element whatsoever in it? I fully understand that among the mass media and members of the mass media in Hong Kong, there are also divergent views, with some believing that "Bowtie TSANG", in issuing a licence initially, actually had some other mission for this radio station. Originally, it was intended to give the "TANG camp" support but now that the "LEUNG camp" has taken the helm, there is an element of revenge in this matter. We have no way of knowing whether or not this is true but at least, such a doubt has been voiced.

We all remember that after LEUNG Chun-ying had been elected, the very first place that he visited to express his gratitude was precisely the "Western District". What is the political moral in this? We have to give a full account of this in history, in particular, it is necessary for elected Members voted into office to do so. Now, I am reading out my stance but it seems highly likely that the outcome of the voting to take place later on would not be favourable. However, I still have to put my position on record.

Some people also said that since DBC had been in operation only for a short time, the loss is not at all great even though it has closed down. However, the essence of liberalism is that at least, there must be the freedom and the right to choose. Does anyone mean that even if the Kowloon Motor Bus were to cease operation tomorrow, it would not matter because we could switch to using the services of the New World First Bus Services Limited or the MTRCL instead? A commercial enterprise should not be silenced because of reasons that appear to carry a political element. The political apprehensions in this matter are apparent and my claim does not amount to shooting discriminately.

Just look at the present Central Policy Unit. Initially, it was called a think-tank but now, it has become a hatchet man watching over public opinion.

SHIU Sin-por made it clear that it was a tool of the Government, asking in return if anyone would think that it is a venue for tea with us. This is his forthright statement. The Government uses such a tactic to control public opinion and it remains reluctant to issue a free-to-air television licence even though this has been delayed for three years — I hope that this is only temporary — but the licence of an existing radio station has been revoked, so this is clearly a way for the Communist Party of China to control public opinion and ideology.

Deputy President, we must give an account to history. I have spoken in full support of Mr Albert CHAN's motion. Thank you.

MR CHEUNG KWOK-CHE (in Cantonese): Deputy President, Hong Kong is a civilized and advanced place, at least in the eyes of our compatriots on the Mainland. When I received friends from the Mainland on their visits to Hong Kong, I always heard them say frankly that the core values of Hong Kong are "democracy, freedom, the rule of law and human rights". The Government also boasts frequently that Hong Kong is an international metropolis. However, in the 15 years after Hong Kong's reunification, the LOCPG and the SAR Government have continually joined hands in suppressing and depriving Hong Kong of its core values. In the past, attempts to seek progress in the constitutional reform met all sorts of difficulties. The Administration has repeatedly requested the National People's Congress (NPC) to interpret the Basic Law and has all along been grinding its axe in preparation for the enactment of legislation on Article 23 of the Basic Law. It also advocates the so-called co-operation among the three powers. Coupled with the unfair intervention in the elections at various levels, the fundamental values on which Hong Kong relies for its existence have been eroded.

In the incident involving Digital Broadcasting Corporation Hong Kong Limited (DBC), with the disclosure of the so-called "top secret audio recording", the community can already see that this is not purely a commercial and financial issue but a serious incident that has rocked the constitutional foundation. This is one instance of the suppression of public opinion under the violent interference in the freedom of speech in Hong Kong over the past few years. We must look in depth into how this incident came about to uncover the truth. If any evil deed is discovered, no matter how powerful the backgrounds of the perpetrators are or

how high their social status is, we must mete out heavy punishment to defend Hong Kong's core values, maintain its probity and justice, and safeguard the fundamental rights of the people.

The freedom of speech is a fundamental right of the people. In a civilized society upholding the rule of law, the freedom of speech is guarded even more strongly by society than other fundamental rights. Take the Constitution of the United States as an example, the Bill of Rights consisting of 10 amendments to the Constitution was ratified in 1791. The first amendment is to strictly prohibit the Congress from making any law abridging the freedom of speech or of the press. The right to the freedom of speech, if it is to be truly exercised, must resist any interference from two aspects: First, any interference with the person who makes a speech and second, any interference with the contents of a speech. The source of interference with the contents of a speech mainly refers to the government. Interference from the government also consists of two aspects: First, in terms of legislation, that is, the existence of a draconian law to curtail the freedom of speech and second, in terms of law enforcement, that is, the government abuses its power or uses a "hired gun" to suppress the freedom of speech. In order to protect the freedom of speech from any interference, restrictions have to be imposed on the government in legislation and law enforcement to protect the person making his or her speech, regardless of sex, race or political inclination, and even convicted prisoners should also be entitled to the freedom of speech. People expressing opinions should be able to express any content freely and safely.

After the disclosure of the "top secret audio recording", the DBC incident has evolved from an incident relating to the operation of a broadcaster to one in which people with special backgrounds schemed to interfere with the freedom of speech with their financial power. Judging from the public reaction to the incident, all of us can at least sense that there is interference with the freedom of speech. Therefore, the Legislative Council, as a monitoring organ, should conduct a thorough investigation to vindicate various parties.

In pointing out that the freedom of speech in Hong Kong is being undermined, I am expressing no excessive worry. Members would recall that in 1994, Mr Albert CHEUNG became the host of a very popular radio programme called "Teacup in a Storm" produced by Commercial Radio. Although it had been on the air for as long as a decade, it was still very popular with the audience.

One reason is the programme host's stance of insisting on speaking up for the public. However, in July 2004, Mr Albert CHENG's employment by Commercial Radio was terminated abruptly and the programme also gradually came to an end. At that time, this aroused extensive debate in the community. Many people believed that the Government had exerted pressure behind the scene to deal a blow to the positions of dissent. Of course, it is very difficult to obtain evidence to substantiate such an allegation. Subsequently, the programme "Headliner", which satirized the ills of society, was criticized in high profile by a deputy to the National People's Congress as outlandish. From then on, this programme has been subjected to constant attacks and now, the existence or otherwise of this programme has become an indicator of the freedom of speech situation in Hong Kong. Earlier on, the RTHK programme "LegCo Review", which comes in the format of light-hearted and casual conversations, is also regarded by those in power as a thorn in the back and they vowed that it had to be eliminated before they would be happy. Also, earlier on, a phone-in radio programme hosted by a programme host, Mr Sam NG, was terminated. Then, an incident in which an article in the press was tampered with happened. In view of all this, as the saying goes, if wind comes out from an empty cave, it is not without a reason. I believe that all of these are signs of interference with press freedom.

The central figure in the "top secret audio recording", Miss LEE Wai-ling — I have listened to her programme before — comments on social ills in the spirit of getting to the roots of matters, an attitude typical of members of the mass media. Although she is able to exert pressure, she cannot be considered scathing. The public like to listen to her criticizing the Government and giving vent to the people's grievances. However, that her comments also aroused the resentment of the LOCPG really comes as a surprise to me. DBC was formerly known as "Wave Media Limited" and it submitted its licence application in early 2008. The SAR Government granted it a licence valid for 12 years in July in the same year and the application process went very smoothly. Initially, the company estimated that broadcasting service could commence in the third quarter of 2009 but subsequently, news surfaced that problems among shareholders had arisen and there was an incessant stream of rumours. In the end, the commencement of broadcasting service was deferred to October this year but the news that some shareholders with "special backgrounds" were unwilling to inject more capital surfaced. As a result, the funding dried up and it was forced to announce that broadcasting service would be discontinued. Now, the problems relating to the radio station are no longer just about business, rather, it is an

incident involving the freedom of speech. The exposure of the "top secret audio recording" tells the public clearly that there is a thinly-veiled behind-the-scene power impeding DBC from going into normal operation and the reason is related to the stances adopted by the radio station in its comments.

For over a decade, society feels that a vaguely discernible yet invisible black hand has been reaching further and further into Hong Kong affairs, impacting on democracy, freedom, the rule of law and human rights in Hong Kong and becoming ever more blatant and reckless. In respect of the freedom of speech, programme hosts were barred from speaking one after another and outspoken columnists and academics have also been beleaguered one after another. Radio stations, television stations and newspapers have been overrun one after another and even the Government makes distinctions among members of the mass media based on political affiliation. Hence the problem has evidently become critical. The Government's response to the incident has been less than forthright, so it seems it also has a hand in this matter. I believe that only the Legislative Council is in a position to take follow-up actions effectively by invoking its powers under the Legislative Council (Powers and Privileges) Ordinance, so that justice can be done to the public.

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

DR KENNETH CHAN (in Cantonese): Deputy President, when I speak here facing Secretary Gregory SO, I feel like speaking to a black hole. I can hardly hold high expectation on him, or expect to get proactive and concrete responses from him. However, we still insist on speaking in the Legislative Council in support of the motion proposed by Mr Albert CHAN to exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance. It is our responsibility to investigate clearly what has happened to Digital Broadcasting Corporation Hong Kong Limited (DBC) that has prompted so many worries, questions and queries from the public.

Deputy President, I think people living in Hong Kong in general understand that Hong Kong is a city of free economy and upholding the spirit of free trade. It is on this foundation that the city maintains sustained development and has become a place we proud of. If the operation of any commercial organization does not involve the contravention of any law and regulations, the Government and others basically should not intervene. Based on the principles

of free market and free trade, the present situation of DBC is now seen and defined as kind of shareholders' conflict of an internal and management affair nature, which is a matter of continual or cessation of co-operation of shareholders. For this reason, it is considered unnecessary to spend the time, efforts and resources to debate or discuss the case in the Legislative Council or on other occasions. Certain Members or government officials consider that we Members may as well adopt the public's attitude of "waiting for an upcoming film by getting ready with their chairs and peanuts", for they just regard the incident as a drama series about the politics among individuals, within the family or the management.

However, Deputy President, I think the reality is not that simple. This is not the case. When the operation of a commercial organization has direct or prominent impact on public interest, Deputy President, the Government can no longer turn a blind eye to it, neither should the legislature. DBC is one of few licensees of digital sound broadcasting. The operation of DBC will by all accounts affect the market of sound broadcasting service in Hong Kong, the freedom of expression and the availability of different voices broadcast to the public. The closure of one radio station means the silencing of one voice, while the silencing of a voice being bold in upholding justice will affect the freedom of expression in Hong Kong direct. For this reason, if any change or irregularity occurs to DBC, a responsible government, a responsible legislature, responsible Members and responsible political parties should make an all-out effort to follow up, instead of finding all sorts of excuse to dodge the issue, such as an "investigation is not warranted as there is no concrete evidence". Rightly due to the lack of evidence or the lack of concrete justification, a further investigation has to be carried out. An investigation does not necessarily come with a foregone conclusion. If a conclusion is drawn before the investigation, the investigation will really be a waste of time. Yet if loads of questions are left unanswered, we have to investigate them thoroughly. Should we not fulfil this obligation of ours? On the other hand, if it is confirmed by the investigation that some people have all along been spreading rumours to besmirch the Government or that some people have been trying to make a fuss, the Government as well as certain shareholders will be proved innocent and Hong Kong society will know the truth. Why would the conduct of an investigation be such a big problem?

It is puzzling why the dispute among DBC shareholders has come under the shadow of politics unknowingly. Regarding the reasons for certain

shareholders' refusal to inject funds, it is said to be related to the influence of the LOCPG, or the so-called "Western District", which attempts to silence DBC that alleged to be often criticizing the incumbent Chief Executive LEUNG Chun-ying and the Government. If the rumours induced by the two recordings disclosed by the DBC management proved to be true, we are living in white terror. For if the Central Government can manipulate the environment and ecology of the media in Hong Kong through various means at will, thus silencing media it dislikes, disagrees and displeases, should not the incident be made very clear then?

Regrettably, I cannot tell whether the Government has been very slow in response, or it has utterly no idea about the gravity of the problem. Or it is simply adopting the ostrich approach due to its indifference, and it chooses to turn a blind eye to the problem, to dodge it again and again. No matter what we say to the Government, it will just repeat the litany of excuses, that the incident is an internal dispute among shareholders of a commercial organization. The Government has repeatedly emphasized that it will not and does not want to intervene. There is a chasm between the position taken by the Government and that of Members, as well as Hong Kong people who have expressed worries and the international community that has expressed concern.

As a member of Hong Kong, I believe my opinion about the incident should be similar to that of the majority public in Hong Kong. We urge the SAR Government and Secretary Gregory SO to take on a more proactive role to examine the incident. We are neither asking the Government to intervene in the media or editorial autonomy, nor to distort the environment for free trade and free economy and intervene in the internal operation of commercial organizations. We hope the Government, in possession of public power, and the government authorities and officials responsible for the scrutiny and approval of DBC's licence will follow up the incident and find out the truth. The present predicament faced by DBC has prompted many unanswered questions. Regrettably, after all these days or to date, the SAR Government is comparable to a piece of iron in its response to this simple and straightforward request. As I said at the very beginning, it is like a black hole. No matter what we say, the Government just gives no response.

Deputy President, when we look at the DBC incident on the whole, we are overwhelmed by the many queries. There are just too many abnormalities about

the incident. Since the Government's reply at the meeting of the Panel displayed its indifference, we as representatives of the public in the legislature should shoulder the responsibility. For this reason, we have the debate today, discussing whether the "Imperial Sword" of the Legislative Council, that is, the Legislative Council (Powers and Privileges) Ordinance, should be deployed to conduct a thorough investigation into the incident.

DBC is an enormous investment, which amounts to \$620 million over the past six years and involves 330-odd staff members and their families. According to the limited information available, we only know that shareholders of DBC consider there are some problems with the management and the accounts are unclear. But for the specific situation, we are at a complete loss, knowing nothing about it. If a select committee is established to investigate the incident, the series of doubts will be cleared. It will then be left to the public to make their judgment whether the incident is simply a commercial conflict caused by the enmity of shareholders.

When DBC shareholders decided to invest in the establishment of the new radio station, they as investors, particularly rational and calculated investors, naturally would have deliberated over the decision. They should have understood that this is a long-term investment but not short-term speculation. If so, why DBC shareholders would suddenly decide to give up the investment already made? Was this decision unusual? Why minority shareholders seeking to buy back shares from those shareholders to continue the operation would be refused any negotiation and discussion? All the queries arisen in the various situations have eventually caused DBC to cease operation and close down. As the investors of the company, it seems that they are willing to see the vapourization of their investment and the closure of the broadcasting organization in which they have invested. Do we not consider the incident baffling? In my view, this concern alone warrants an in-depth investigation.

Deputy President, as I said, the public and I have a series of questions about the incident. The avalanche of speculations and doubts have prompted worries about the present and the future of the media in Hong Kong, of the freedom of press and of the freedom of expression. The Chief Executive hopes the public will understand what he does is done in an open and honest manner. So, by the very same spirit, we hope that a select committee will be set up by the Legislative Council to enable all shareholders and persons affected by the DBC

incident to give an account to the public, to tell the truth to the public and to give the incident a fair account in an open and honest manner. When all issues and information have to be disclosed during the inquiry of the select committee, the Government can no longer adopt the ostrich approach and evade the issue. I think all Members truly committed to Hong Kong people and sincerely working for the interest of Hong Kong should support this motion and support the setting up of a select committee via this debate to reveal the truth of the incident. Otherwise, I believe many people will think that the legislature and Members opposing the motion, as well as the Government, show contempt for the right to information of Hong Kong people.

Thank you, Deputy President. I so submit.

MS CYD HO (in Cantonese): Deputy President, I speak in support of Mr Albert CHAN's motion on the appointment of a select committee to conduct an in-depth inquiry into the discontinuation of sound broadcasting service by Digital Broadcasting Corporation Hong Kong Limited (DBC) by invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) which empowers this Council to obtain documents and summon witnesses.

Deputy President, many people said that the discontinuation of sound broadcasting service by DBC is a commercial dispute, and I also had such a misconception before. But after looking up more information, I have to correct my original misconception. When a broadcaster is "sapped" by its shareholders, or someone has refused to inject capital in his capacity as the majority shareholder, we can certainly say that this is because the majority shareholder does not trust the management, or he is not sure whether the management can put resources to good use in carrying out their duties. Nevertheless, he has also refused to sell his shares or buy out the others' shares at a reasonable price. This seems to be a bickering among shareholders. However, we may ask why this is not allowed as this is also a kind of commercial operation. My answer is "No". Even though the shareholder concerned is so rich that he can use his capital as the weapon to defeat his opponents, it is not appropriate to cause the discontinuation of sound broadcasting service of a radio station because members of the Board of Directors should comply with the licencing condition of the Broadcasting Authority, that is, to ensure the smooth operation of the radio station. If someone has tried to "sap" the radio station so that it cannot operate smoothly, he

may no longer be suitable to be the licensee in his capacity as a member of the Board of Directors.

So, from the perspective of public interest, it is unacceptable that the shareholders of a licenced corporation have committed predatory acts against each other. Moreover, in this process, it is also revealed that some shareholder has made it clear at a Board meeting that, when considering whether or not LEE Wai-ling should be hired as a programme host, he was worried whether the LOCPG in Western District did not like it. This is obviously a political factor because the LOCPG in Western District has not placed any advertisements on DBC. If the LOCPG has placed a lot of advertisements on the radio station, it is justifiable for the management to have such a consideration. But in spite of this, the news and commentary programmes of the news department of a broadcaster should not be subject to any influence of any commercial considerations, not to mention that the LOCPG is definitely not a commercial organization. Secretary, if you can provide information and facts to prove that the LOCPG has transferred a lot of money to somewhere else or committed acts that involve money, we may define it as a commercial organization. But it is not the case at present, Deputy President.

Besides, it is suggested that the audio recording may be faked. The member of the Board of Directors who spoke was misled into saying those words and the audio recording was doctored so that the words were taken out of context. We really have no idea about it. So, Deputy President, an investigation is necessary. Whatever happened, and regardless of whether or not someone has advised the shareholder concerned to ask the LOCPG this question and this shareholder was made a scapegoat due to his remark after his visit to the LOCPG, we have no idea at all. So, an inquiry should be conducted. We have no idea whether the audio recording has been edited. Perhaps, Members may ask a question like that posed by Dr Elizabeth QUAT: If recording is allowed at Board meetings, who will do business with you? In fact, I will not ask whether the circumstance under which the recording was made was reasonable. In my opinion, the most important sentence is: "The LOCPG may not like it." Because of this remark, the appointment of LEE Wai-ling as a programme host was rejected, thereby undermining the quality of news and commentary programmes. This is the most important remark and an inquiry is necessary.

I remember that when Mr Albert CHENG and other representatives were invited by a panel to make representations, some Members and even the Secretary said that this audio recording was made 10-odd months ago. I am baffled by this. As the date of the audio recording is not specified, I do not know why the Secretary said that it was made 10-odd months ago. When I asked him about this, he refused to admit anything or give further explanation. However, when some Members asked Albert CHENG whether this audio recording was made more than 10 months ago, he could not answer it because he was prohibited to say anything under an injunction by the Court. Therefore, we have a much stronger justification to invoke the P&P Ordinance to summon witnesses, who will be able to tell the truth under the protection of the law, so that the public will know what has happened. As some Members said just now, the Legislative Council should not interfere with commercial operations. In fact, the Government has interfered with commercial operation more than once. As Ms Emily LAU said earlier, the Secretary was also involved in the broadcast of the Olympic Games. He has to contact various parties every day in order to deal with the issue on their behalf. Besides, the Government has also indirectly intervened in the Sunbeam Theatre incident when it was going to be demolished, and the availability of venues for the performances of Cantonese opera in future. When deciding whether or not to make intervention, the Government should consider whether the public interest is involved. The discontinuation of sound broadcasting service by DBC does involve public interest because DBC is not merely a shop which has opened a dozen branches selling fish ball noodles in a district. It is one of the few radio stations in Hong Kong. We have Radio Television Hong Kong (RTHK), Commercial Radio, Metro Radio and DBC in Hong Kong. When one of these four radio stations has stopped operation, the choices opened to the public will be significantly reduced. While receiving information is the right of the public, it is the responsibility of the Government to ensure the free flow of information. Thus, the normal operation or otherwise of DBC involves not only the shareholders' interest, but also the public interest because it will affect the receipt of information by the public. However, the Government is derelict of its duty. It has failed to fulfill its responsibility of protecting the right of the public to receiving information. That being the case, we in the Legislative Council cannot shirk our responsibility and should exercise the powers conferred on us to conduct an in-depth investigation into this incident.

Apart from the separation of powers in the SAR, we have the fourth power, that is, monitoring by the media. Therefore, we can enjoy press freedom and

freedom of speech in Hong Kong. This is the protection of the rights of Hong Kong people under the principle of "one country, two systems" and this is one of the pillars of "one country, two systems". If Members opposed invoking the P&P Ordinance to conduct an investigation, thereby undermining the protection of the diversified freedom of the press and freedom of speech, they would have turned a blind eye to the perversion of "one country, two systems" and the infringement of the rights of the general public. In fact, both the public and members of the media industry are worried that the media in Hong Kong will eventually be integrated. As a result, news reports, current affairs analyses and commentaries will be subject to invisible constraints. Eventually, the quality of all news reports will be substantially compromised and officials will respond to such news reports in a bureaucratic manner. Worse still, the media would even provide a platform for officials or old friends of the Central Policy Unit to manipulate public opinion with one-sided information. As a result, SHIU Sin-por and ZHANG Zhigang would be able to help LEUNG Chun-ying fight the media war. Meanwhile, analyses based on facts and data will be banned, and divergent views will be blocked. The Government has refused to set up public service broadcasting over the years — the Government has fixed RTHK by appointing an Administrative Officer who has no knowledge in broadcasting, the media or journalism as RTHK's Editor-in-Chief. In less than a month after taking office, he dismissed NG Chi-sum and Robert CHOW. Regarding this score, Hong Kong people are most infuriated. But now, even the *LegCo Review*, which is a boring programme about the business of the Legislative Council, will be suspended by the Government. The Government has completely ignored the function of public service broadcasting in Hong Kong, apart from the fact that the issuance of a free-to-air television licence has been delayed for a long time. DBC, which has been issued a licence, has to take itself off the air in less than a month. But the Government also remains indifferent. In fact, the landscape and development of the electronic media has remained stagnant for many years. Eventually, the news reports and commentaries that appear in the mainstream media may be all the same because they must sing from the same hymn sheet, that is, the official version. This will certainly be the most desirable scenario for the Government. However, I must tell the Government here that Hong Kong people are discontented and they know how to distinguish between the right and wrong. Over the years, those media workers who have an ideal have continued to discharge their duties with perseverance despite the very difficult working environment. We in the Labour Party and Members of the democratic camp will

strive to safeguard the freedom of the press and the freedom of speech. Today, we will support Mr Albert CHAN's motion.

DR FERNANDO CHEUNG (in Cantonese): Deputy President, I rise to speak in support of Mr Albert CHAN's motion. We should invoke the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to appoint a select committee to inquire into the incident of Digital Broadcasting Corporation Hong Kong Limited (DBC), which has brought Hong Kong into disrepute.

The dispute concerning DBC has been going on for some time. The Government and Secretary Gregory SO have adopted the attitude that this is a commercial dispute and they will respect the shareholders' autonomy, the autonomy of the press and the autonomy of the broadcasting industry. Hence, it has nothing to do with the Government since it is a commercial dispute, which should be decided by the market. Deputy President, is this purely a problem of the market? The broadcasting market has been subject to very stringent regulation. For example, it is specified in the law that one single corporation is not allowed to own different media. The spirit behind this is that public broadcasting, though a kind of commercial activity, is using valuable public resources involving information, the media, the press and even the freedom of expression of various parties. We have to maintain pluralism and should not allow one party, be it a corporation or certain political interest, to monopolize the public space of Hong Kong. Therefore, we have not enacted any legislation prohibiting a company from selling fish ball noodles while selling Western-style food and Chinese meals at the same time. There is no such restriction in law and a corporation can set up a number of restaurants and companies in order to sell different kinds of food. This is not a problem. However, this is not allowed in public broadcasting, which is definitely not purely commercial operation, but an important venue subject to regulation and protection by the Government with a view to maintaining diverse voices, the freedom of the press and the freedom of expression.

There are a lot of doubts concerning whether it is merely a dispute among shareholders. First of all, the founder of DBC, Albert CHENG, has clearly pointed out that he was suppressed by the LOCPG. Although a founder of DBC has indicated the presence of political influence and the involvement of non-commercial factors, the Government did not respond to it. Nor did the

Government give any response when shareholders failed to inject capital as specified in the contract. As we can see it, some shareholders have made it clear that they will neither sell their shares nor inject capital. Then, what will be the consequences? DBC will be "sapped" and this is totally inconsistent with the general commercial interests and logic. However, the Government said that this is the individual decisions of shareholders and it has to respect the freedom of shareholders. The incident is actually very clear. The founder and staff of DBC, the audience and members of the public, concern groups of press freedom, Legislative Council Members and political parties have requested government intervention and investigation. However, the Government has maintained that it will not intervene in the incident and will only continue to respect their freedom. It has further added that from the technical level, DBC cannot violate the licencing condition.

Deputy President, obviously, I think Secretary Gregory SO is derelict of duty and the Government is shirking its responsibility, turning a blind eye to non-commercial elements which have intervened in the operation of DBC, thus undermining the public interest. Its response to the incident is also evasive. This is unacceptable to us. Among the disputes surrounding the whole incident, how many can be classified as political suppression? According to an audio recording, we heard that someone — I do not know who it was; but it is alleged that he is a major shareholder of DBC — pointed out that the LOCPG is very unhappy with LEE Wai-ling and refused to let her to be a host in DBC. Obviously, this is a kind of political suppression which aims at undermining the public's right to know, freedom of the press and freedom of expression. Is the audio recording genuine or fake? Is Albert CHENG's allegation that the LOCPG has engaged in the suppression true or false? Why have the shareholders committed such irrational and commercially unviable behaviour to "sap" DBC? Why did the Government turn a blind eye to it?

I remember that when there were disputes among some major television stations over the broadcasting of the World Cup matches, the Government had intervened in a proactive manner before any conclusion was reached. The Government has interfered even in the broadcasting of the World Cup matches. But now, this is an incident involving a radio station, and digital broadcasting has undergone years of preparation Now when a major digital radio station is going to fold, the Government said that it is purely a commercial dispute, and it is none of its business. Deputy President, I think this is totally illogical. So, I

have no other choice but to support the appointment of a select committee under the P&P Ordinance in order to investigate the incident thoroughly. As the Government has shirked its responsibility, the Legislative Council has to discharge its duty. Thank you, Deputy President.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, first of all, I would like to thank Mr Albert CHAN for proposing this motion because the cessation of DBC, as well as the recent series of developments

First of all, I would like to thank Mr Albert CHAN for proposing this motion because the incident as a whole is puzzling indeed. Since it has been rumoured that some shareholders of DBC, because of a dispute among themselves, have refused to inject capital or even refused to let others' capital being injected into the company, it is tantamount to a dead end for DBC. An organism will certainly die if it is not allowed to take food or excrete. The reason is as simple as that.

By logic, no businessman will want to incur any loss. Why should one inject capital into a business which will certainly incur losses? When a person knows that he can sell his shares at a good price to get back his principal, but he refuses to do so, it is even abnormal. In fact, this should be a most welcome opportunity. Nevertheless, he has turned it down as if it were worthless. Surely, this is highly questionable.

I have pointed out time and again that the other shareholders, including David LI, our former colleague in the Legislative Council, are all businessmen. The Bank of East Asia, headed by David LI, is a financial institution with the primary objective of making profit. It is also a listed company. His practice has really made me worry for the minority shareholders of the Bank. As a famous businessman, he has adopted such an approach in doing business. Let us take a look at the incidents during his lifetime. Has he committed such a stupid act apart from the alleged insider dealing for which he was painfully fined? Another shareholder is Arthur LI, who was highly reputed in the Legislative Council for playing video games when serving as a Bureau Director. He is most adept at doing two things at the same time. He is also a shrewd person born in a large family. Why did he make a decision which would harm others but bring no benefit to himself? Did he try to "poison himself in order to kill the tiger that

eats him," so to speak? Did he regard Albert CHENG as a tiger and therefore poison himself first so that Albert CHENG would also be poisoned when he ate him?

Secretary Gregory SO, I told you that you are indebted to Mrs Rita LAU who has resigned due to ill health. Originally, you would not take up this position. But because of her resignation due to illness, you had the opportunity to be Bureau Director. Later, due to changes in the political situation, you are promoted to be the Bureau Director after her departure. Now the problem is: I hope that you, as an official of the "imperial court", will conduct an investigation into the incident. But your excuse is that the Government will not intervene in the commercial disputes among shareholders. Buddy, I am not asking you to investigate the Great Day Restaurant (大日子酒家) in Tai Po, and you may not do so because the restaurant is run by your acquaintances. After all, this does not fall within your portfolio. However, I am asking you to investigate an incident which is not merely an ordinary commercial dispute. Rather, it is related to an industry involving scarce resources under your portfolio.

Regarding broadcasting through public airwaves, Members know that I have a thick track record because I have tried to engage in broadcasting without a licence, leading to repeated prosecutions followed by summons after summons. Now the problem is: This radio station is licenced by the Government in the hope that it will provide more choices to Hong Kong people in the broadcasting industry. Moreover, when they applied for the AM channel licence, the relevant government department advised them to operate digital broadcasting simultaneously. It is the Government which has gradually brought this into being. Now, the company is going to die, but the cause of death remains uncertain and may even give rise to a suspicion of murder. Why does the Government not investigate it? I am really puzzled.

(THE PRESIDENT resumed the Chair)

Speaking of interference with the operation of local media by the LOCPG — the President is back and I feel more spirited — Is this the first time of its interference? I remember that in 2004, our dear friend Albert CHENG, who is running DBC, and Mr WONG Yuk-man did not aspire to be Legislative Council

Members to discharge their duty as the second power. Rather, they aspired to be "talk show hosts" in order to discharge their duty as the fourth power. They wanted to be commentators rather than Legislative Council Members. But back then, the LOCPG resorted to some behind-the-scene tactics to sweep them out in order to influence the results of the 2004 election. This is not an interference with the broadcasting industry, but an infringement of their personal safety. Afterwards, however, Commercial Radio removed them from their posts for the ridiculous reason that they had to leave Hong Kong and failed to discharge their duties due to intimidation by some vicious power incited by a regime. Can Members tell us what Commercial Radio meant?

Commercial Radio has played a collaborative role. According to Albert CHENG, Commercial Radio called for the suspension of a programme when discussing contract renewal with him. This is another example. The explicit or implicit interference by the LOCPG with the local broadcasting industry did not begin today. If one should say that we have created such an allegation out of thin air, how about the incident in 2004? Why did Mr WONG Yuk-man go off the air suddenly in 2005? What are the reasons?

If we look at the development of Commercial Radio, we will find that it can execute the LOCPG's instructions by getting rid of the eyesores of the LOCPG. After accomplishing the mission, Commercial Radio can continue with its operation. The problem is: How about DBC? According to the audio recording, WONG Cho-bau is a key figure in the incident. WONG Cho-bau, who is a friend of Donald TSANG, has removed the clubhouse at all costs for the construction of a luxurious rooftop for him to keep koi fish. He is no ordinary person, but a Chinese People's Political Consultative Conference delegate nicknamed "Shenzhen LI Ka-shing". He plays a significant role in the political circle and the former Chief Executive almost had to step down because of him. We all know that the LOCPG does not like LEE Wai-ling. But LEE Wai-ling is not critical enough. If the one to be hired was "Tai Pan" and "Yuk-man", they might have died already. This message is crystal clear, but DBC refused to comply. Therefore, there are two versions. As LEE Wai-ling has not yet been hired, how can she be got rid of? The case concerning Commercial Radio back then was crystal clear. For those who had been hired, they would certainly be driven away or refused renewal of their contracts. So, the allegation is very clear.

Secretary Gregory SO, please do not drop your head. When being asked about the incident, you said that you do not know. However, do you support an investigation or not? You are an official of the "imperial court" at a ranking equivalent to an ombudsman in the ancient times, to whom the masses would kneel on their knees and lodge appeals if they had any grievances, especially for those who were like LEUNG Tin-loi whose family members all died a tragic death. Now, someone wants to lodge an appeal, but you are unable to tell him the findings of the investigation. Neither can you say in categorical terms that the audio recording is faked, nor can you ask the LOCPG this question in a categorical manner. Moreover, as the LOCPG has denied the allegation, you then said that an investigation is not necessary. According to your incumbent position, an investigation is certainly not necessary. That being the case, what sort of official are you? Should we ask Mrs Rita LAU to come back and take over your position so that you will be demoted to be Under Secretary? Mrs Rita LAU once said that all businessmen are cunning, and I think her remark is totally true, though she was rebuked as a result.

What is the crux of the problem? It lies in the fact that Hong Kong people are most worried. The shareholders of a digital radio station, which has been set up under the Government's policy initiative, are just like "idiots" due to the interference of the LOCPG. David LI, Arthur LI and Allan WONG have all become "idiots" because they prefer to dump money into the sea. As a result, the radio station cannot continue to operate. This point alone is sufficient justification for an investigation because they have the responsibility to provide services under the contract.

When I applied for a licence to operate a people's radio station, the Government said that resources should not be wasted as I have no capital and could not build a transmitter station. Furthermore, it claimed that what I was going to operate was in fact a community radio station, for which a licence should not be applied. Rather, I should apply for a community radio licence. However, the operators of the digital radio station have fully complied with the regulations, and all commercial decisions are made in a sensible way. But the Government has allowed a rogue, WONG Cho-bau, to check the accounts. Claiming that he was discontented with the DBC accounts, he had to check whether the radio station had spent money indiscriminately. But after the checking, he could not find anything. Should he give any explanation to the public? As it was proved that this was not the crux of the issue, why did you not exercise control? This is a very important policy issue of the bureau under your

charge. It is an issue relating to different media for different people so that different people can express different opinions, and those who do not like to listen to the programmes of the existing four radio stations can have another choice. If you do not handle this issue, what is your responsibility? I really want to ask you this question: What is the point of you sitting here?

On this issue, Ricky WONG has asked LEUNG Chun-ying whether there is collusion between the Government and business. In a question and answer session, this question was balloted and asked by someone on his behalf. LEUNG Chun-ying, who is proficient in the craft of "hypocritical rhetoric", can certainly answer it brilliantly. He said proudly that there was no collusion between the Government and business, adding that they did not admit the existence of such conduct. But insofar as this incident is concerned, it should be collusion between business and the Government instead of collusion between the Government and business because the LOCPG has asked the businessmen to dump money into the sea. As a result, what is going on, what has been committed and what has been going on smoothly cannot be continued anymore. What is the difference between this incident and the unreasonable treatment received by Ricky WONG? Worse still, you have made sarcastic remarks to tease him, saying that he wants to get married before succeeding in courting girls, right? Because the wind direction has now changed, right?

When you are sitting in this Chamber or elsewhere, you have to listen to the LOCPG and suppress the freedom of expression in Hong Kong, thereby undermining the characteristics of Hong Kong as a multicultural city with diversified information, with the purpose of facilitating your governance so that you can cling to your office and cover up various scandals. That being the case, buddy, how can I trust you? I have not asked you to step down. I have only demanded LEUNG Chun-ying to step down as I still have a little bit of trust in you. Regarding LEUNG Chun-ying, need I say more? But buddy, if you say that to invoke the Legislative Council (Powers and Privileges) Ordinance to conduct an inquiry into the incident is tantamount to placing no trust in you, it is really difficult for me to give you face. Isn't it true that the more something is debated, the greater truth will come out of it? And the more the incident is investigated, the more truth will come to light?

Today, someone said that an investigation is not necessary. This is a totally anti-intellectual remark simply because we cannot impeach the Government and you, Gregory SO. If we impeach you and demand that you

step down, you will support a motion of no confidence or the appointment of a select committee vested with powers and privileges as a stopgap measure. This is precisely the approach adopted by LEUNG Chun-ying, who has immediately agreed to come to this Council on hearing that we will impeach him. As for the royalists (*The buzzer sounded*)

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

MR LEUNG KWOK-HUNG (in Cantonese): I know. LEUNG Chun-ying has made a mistake indeed he is a third-rate man

PRESIDENT (in Cantonese): Mr LEUNG, please stop.

MR LEUNG KWOK-HUNG (in Cantonese): You are right. He is third-rate.

MR CHUNG KWOK-PAN (in Cantonese): President, according to plan, there should be four operators to be provided in phases with 18 digital broadcasting channels after the Government issued additional digital audio broadcasting licences in March last year. However, DBC, one of the operators, namely Digital Broadcasting Corporation Hong Kong Limited mentioned in today's motion, had discontinued and then resumed its broadcasting service in the past few months before eventually taking all the channels off air at midnight on 31 October.

Disappointingly, the discontinuation of DBC's broadcasting service has not just deprived the audience of a choice, but also constituted a defiance of DBC's obligations under the granted licence. However, today's motion proposes that this Council invoke the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to set up a select committee to intervene and investigate the underlying commercial disputes or internal operational problems of the corporation. I am absolutely doubtful about this.

Since as early as the end of July this year, rumours have been doing the rounds in the media about disagreement over capital injection within DBC. Mr

Albert CHENG, the then DBC founder, also admitted disagreement among shareholders over the operation and direction of the company, and even "loss of the basis for mutual trust".

On 27 July this year, the *Hong Kong Economic Journal* published an article entitled "窒礙數碼電台發展的幾座大山" (Several Mountains That Inhibit The Development of Digital Radio Stations) which commented frankly that it was a very audacious, ambitious and high-risk decision for DBC to invest heavily in the development of digital audio broadcasting. It also remarked that, despite the global advent of digital broadcasting over the years, there was not yet a single example of commercial success to date.

On the issue of capital injection, Mr WONG Cho-bau, the then board chairman and one of the shareholders of DBC, responded to this effect, "Involving such an enormous investment, how can the operation continue?" At the same time, he also said that he had decided to refuse making further capital injections after considering such factors as the company's prospects.

Meanwhile, DBC shareholders stuck to their own arguments, which were not just reported by the media, but also eventually brought before the Court, resulting in a raft of lawsuits that remain unresolved to this day. Outsiders still think that the shareholders are engaged in a dialogue of the deaf, reeking strongly of a commercial dispute. It is therefore inappropriate, in my view, for the legislature to get embroiled in a commercial dispute, let alone interfering with the internal operation of a media organization.

In this month, the House Committee proceeded to discuss whether or not to invoke the P&P Ordinance to look into the issue of DBC discontinuing its broadcasting services. At that time, the Liberal Party cast a negative vote for this reason, and the motion was negatived. Even if we discuss this issue again now, the stance of the Liberal Party remains consistent, not to mention that the Court is still dealing with the issues among relevant shareholders, and the last thing we hope for is to give people the impression that we do not respect the judicial system.

President, I so submit.

MR CHAN CHI-CHUEN (in Cantonese): President, having worked in the broadcasting industry for more than 15 years, I have witnessed many Rashomon

affairs. The discontinuation of sound broadcasting service by DBC could be said to be the most mysterious incident in the history of broadcasting service since the inception of Hong Kong. The mystery of the incident lies not in the shareholders' reluctance to buy or sell their shares, or the disclosure and wide circulation of an audio recording on the Internet. Rather, it relates to the Government's role in the incident. Under general circumstances, upon discovering such an incident, the Government should pretend to handle it, although it is reluctant to do so in its heart. It will play the hypocrite with every semblance of sincerity by pretending to be dealing with the issue. Then, after a period of time, it will say that it has tried its best but the problem remains unresolved due to its limitations. But in this incident, it has adopted the posture of distancing itself from the incident from the outset. Moreover, officials at various rankings have been singing from the same hymn sheet, giving only the same answer whenever being asked about the incident: The Government does not have any role to play and will not intervene in it. Such an attitude and style has rendered the incident as a whole most dubious. Why did the Government not try to understand and assume a more active role in the incident before jumping to the conclusion that there is no political interference, and this is simply a commercial dispute among shareholders and the Government does not have any role to play?

We should not say that Government has done nothing. It has done something. But what has it done? Last month, a fine of \$80,000 was imposed on DBC by the Communications Authority (CA) on the ground of persistent discontinuation of broadcasting service in breach of conditions of the sound broadcasting licence. The Government is willing to place a final straw on the company, and it will do it immediately. What is the explanation of the CA? According to the CA, the frequency spectrum allocated to DBC is a kind of scarce public resource. The discontinuation of broadcasting service by DBC goes against public expectations of putting frequency spectrum to good use. Simply because of this remark, we have to pursue the matter unswervingly. We will discharge the duty that has been shirked by the Government because frequency spectrum is too precious to be wasted at will. Any competent person will take up the responsibility that has been shirked by the Government. Any person who has folded his arms as an onlooker is simply an accomplice. Legislative Council Members are vested with the last piece of power and opportunity. The motion we proposed in the Panel on Information Technology and Broadcasting was passed, but it was negated in the House Committee. Although the chance of the motion passing today is slim — unless we put it to the vote immediately and shut the doors to prohibit other Members from entering —

we will be accomplices if we stand back, or do not express our opinions or put forth any motion. The explanation of the CA has reminded us that DBC's discontinuation of broadcasting service is a very serious problem. An explanation is in order to answer public expectations. Furthermore, the issue involves the core values that the SAR Government has vowed to defend, apart from the fact that it is so significant that an in-depth investigation into all evidence and testimonies is deemed necessary, and no one should say that the file can be closed by dint of it being a "commercial dispute".

We are not confronting the Government today. To some extent, we are helping the SAR Government and the Secretary. I do not know whether the Secretary is reluctant or unauthorized to deal with it, or whether he is prohibited from dealing with it, or whether he is playing a collaborative role by turning a blind eye to the issue. However, we are trying our best and making the last-ditch effort by raising this issue again so that the public will put their focus and attention on the incident. A select committee may even be appointed to deal with the incident. If the Secretary finds the incident a sore subject, and he feels aggrieved and unable to deal with it or move a tiny step, we will confer on him the powers to handle it now.

Secretary Gregory SO told us in a categorical manner that it has nothing to do with the freedom of speech and it is simply a commercial dispute. I have no idea how the Secretary happens to know all the circumstances surrounding the incident. Is it your perception or you are privy to something that we do not know so that you can make such a sharp or definite judgment? In the days to come — you certainly know that the media are so pervasive — if they could produce more information and evidence which can prove political suppression and intervention, how could Secretary Gregory SO find a graceful way out? Would he take up the responsibility and resign? We are doing our best and making earnest efforts in the hope of getting to the bottom of the incident. Even though Secretary Gregory SO has his own judgment and presumption, why should the DBC shareholders, staff and the people of Hong Kong place trust in your testimony?

Furthermore, the Panel on Information Technology and Broadcasting conducted a public hearing on Saturday a fortnight ago, which was attended by many people who have also expressed their views. It was disappointing to the people that the Secretary only attended one of the three sessions due to official commitment. One of the questions they raised is that — last time I hoped the

Bureau could give a reply to this question and other Members have reiterated it today — The former Secretary for Commerce and Economic Development did intervene and provide assistance when Asia Television Limited was plagued by financial difficulties. Was this an exception or a mistake made by the former Secretary? Or was it indeed inappropriate? You should offer an explanation to the public as to whether the former Secretary has meddled with other's affairs or done something not within his portfolio in order to clarify the case for the doubting Thomases.

Let me recap all the circumstances of the incident — Many Members have mentioned them time and again today as we still have time — to see what has happened in this so-called commercial dispute and the justifications behind it. After the trial broadcasting of DBC on 15 August 2011, a total of seven channels had come into operation as of 15 May 2012. During this period, no problems relating to financial problems of the shareholders or operation were heard. On the contrary, notice was given that a complete debut would be launched on 21 September 2012. According to the shareholders' agreement, \$620 million will be injected into the company in six years. However, only \$150 million had been injected when the broadcasting service was ceased in October. This is inconceivable. Any person with common sense even without experience in broadcasting would realize one thing, that is, no one, not even a genius, can foresee whether a radio station can continue to operate when only one sixth of the capital has been injected and the trial broadcasting has begun for less than a year. Without any signs of financial difficulties, four shareholders, including WONG Cho-bau, David LI, Arthur LI and Allan WONG, resolutely refused to comply with the original plan of injecting capital. Neither did they agree to sell their shares. This led to the liquidation of DBC. Does this so-called business decision conform to common sense in business?

Besides, the audio recording of an internal meeting of DBC was being circulated in late October. It can be clearly heard that WONG Cho-bau pointed out that the LOCPG was discontented with LEE Wai-ling's criticism against government policies in her programmes and did not want to hear such remarks anymore. During their conversation, Albert CHENG was consulted about how to address the matter. In response, Albert CHENG responded that no interference should be effected just because of the pressure exerted by the LOCPG.

I recall that at a meeting of the Panel on Information Technology and Broadcasting, the Secretary mentioned that he had listened to the audio recording. However, is the audio recording the whole and intact copy of the original? Has the Secretary requested the relevant parties to produce all the audio recording? Has he taken the initiative to ask them whether there are any other records? If a conclusion is reached merely from an excerpt of the audio recording, it would amount to deliberate refusal to investigate the incident so as to shirk responsibility.

According to the audio recording, WONG Cho-bau implicitly told Albert CHENG why the shares of DBC could not be sold. In fact, our repeated support for an investigation is not meant to help "Tai Pan" (Albert CHENG), but to help Mr WONG Cho-bau as well. It is also a bit unfair to him as all accusing fingers are pointing at him. However, he prefers not to face the media or host any press conference to explain what grievances, false accusations and criticisms that he has suffered.

In fact, one of the possibilities, *inter alia*, in this incident is that — I have to mention Mr WONG Cho-bau again — because of his dislike of LEE Wai-ling, he has exerted pressure on her in the name of the LOCPG, just like a fox masquerading as a tiger. As a result, this has done injustice to the LOCPG. If that is the case, I think it is unreasonable that the LOCPG should be defamed by the others in such a manner as I am also very concerned about the LOCPG and would like to defend its rights and interests. Besides, have these audio recordings been subject to forensic examination in order to find out whether they have been edited or not? Have these recordings been doctored so that they can be cited as evidence of political suppression in favour of Albert CHENG alone? As Members of the pro-establishment camp have said, why did he not produce the recording earlier? The timing in this regard is questionable, apart from his motive. Did he want to hold someone to ransom or blackmail somebody? It may be possible, but it is difficult to substantiate it. Should the investigation be continued? Should a select committee be appointed to inquire into the incident so that the biggest culprit behind the affair can be uncovered? Should the LOCPG be cleared of its name, be cleared of interfering with the freedom of speech in Hong Kong? We should conduct a thorough investigation to do justice to all the relevant parties. Hence, I think Members of the pro-Chinese camp should support this motion, instead of allowing this Rashomon affair to continue, thus causing grievances in the LOCPG. Maybe, the LOCPG finds it

inconvenient to say anything about the incident as it might get worse. We should investigate the incident thoroughly, verify the testimonies and evidence. Only this is the real solution to the problem.

Looking back at the public hearing in November, 193 submissions were received. Apart from a couple of submissions, all of them held that DBC should resume broadcasting. The majority shareholder Albert CHENG has also reiterated that he is capable of resuming broadcasting of DBC. Most of the 800-odd members of the public, programme hosts and staff who attended the public hearing suspected political interference. We cannot say that all the accusations are fabrications or the incident is sheer fiction — I should be careful in uttering these terms, especially in sequence — what is the relative weight of the so-called commercial dispute and political interference in this incident? I do not mean to insist on arriving at a conclusion, although the public and the audience do consider that only by appointing a select committee could DBC be given an opportunity of resuming broadcasting. I do not have such a presumption? Hence, I hope I can persuade Members of the pro-establishment camp. They may be indifferent to the fate of DBC, or even wish to see its death. Even so, we do not wish to a company wind up without justifications, right?

As a responsible parliamentary assembly, its powers are very limited. It is an unnecessary worry that we will abuse our powers, using the "imperial sword" or detonating a "nuclear bomb". Have we deployed the "imperial sword" for whatever incident? Do members of the public who have attended the public hearing have unnecessary worries? Are their doubts about the Government and the LOCPG unsubstantiated? The best way to do justice to all parties concerned, including Albert CHENG, the majority shareholders and the LOCPG, is to appoint a select committee so that we can examine their testimonies, the investment data and public opinions. In fact, no conclusion can be drawn on any remarks of any party arbitrarily.

Recently, in his statement on requesting to settle the score of DBC, Mr Morris HO also pointed out that the accounting firm appointed by WONG Cho-bau had completed the forensic audit, confirming that no untrue information was found in the financial report and no dishonesty act had been committed by the management in their such capacity. Now, there is no more excuse for us to cast any doubts on it.

Under such circumstances, should we not exert our utmost to prove whether there is any political suppression; and whether any intervention to the detriment of the core values of Hong Kong has been made? Let me reiterate that should any new evidence surface tomorrow, it will be difficult for Secretary Gregory SO to find a way out. He may even have to take the blame and step down.

I so submit.

MR MA FUNG-KWOK (in Cantonese): President, I am personally very much concerned about the problems arising from Digital Broadcasting Corporation Hong Kong Limited (DBC). On a number of occasions, I have requested Secretary Gregory SO to actively follow up on the incident and try to mediate the dispute among the shareholders. In the two public hearings which I have attended, I have heard the voices of many members of the public calling on the Government to more proactively deal with the problems arising from DBC.

There are two major arguments as to whether the Government should intervene in the DBC issue, raised in the past and today's discussions.

One argument holds that an audio recording of a dialogue in an internal meeting supposed to be classified being widely circulated on the Internet has sparked the concern that the shareholders of DBC have been subject to outside interference and therefore do not want to continue with capital injection. As the incident will affect the freedom of speech in Hong Kong, it calls for an investigation.

Another argument is that the current situation of DBC is just a commercial dispute which involves the operation and maintenance of DBC, as well as the shareholders' decision regarding the returns from their investment in DBC. In fact, a serious financial loss has been incurred by DBC since its inception. Whether the shareholders trust the incumbent management and whether they are willing to continue with the investment are choices of the shareholders. It is indeed very difficult for the Government to intervene.

As to these arguments for and against intervention by the Government, I have some reservations about both of them. First of all, when it comes to the alleged external interference on the shareholders, if the audio recording is the key

evidence, calling for the Legislative Council to conduct an inquiry, my view is that, just as many commentators have said, the audio recording was made more than 10 months ago. If the shareholders were subjected to outside interference and decided not to inject capital, it should be an incident which happened more than a year ago, instead of the last few months. During the trial broadcasting for one year or so, I did not see any restraints on the commentaries of DBC nor any interference from the "outside force", as mentioned in the audio recording, which has brought about any substantial impact on the operation of DBC. Therefore, I voted against the motion on the appointment of a select committee at meetings of the Panel on Information Technology and Broadcasting and the House Committee earlier. In fact, regarding the operation of a radio station, will licensees have any political considerations on the composition of shareholders when seeking their partners? We can explore this issue from this perspective. However, it is also a choice of the shareholders, so it is difficult for an outsider to grasp the full picture.

I agree to part of the second argument. The Government should not be intervening casually in a commercial dispute among shareholders. However, DBC is definitely not an ordinary business operator. Unlike typical commercial organizations, DBC involves the development of digital radio broadcasting in Hong Kong. There are two points I would like to emphasize in particular. Firstly, in comparison with other major cities, the development of digital broadcasting in Hong Kong began rather late. In 2010 the first licence was issued, lagging behind other regions for more than a decade. As the first digital broadcasting radio station, DBC is the forerunner and the largest operator in Hong Kong. I have received a lot of emails in the public hearings, learning that DBC does have a group of loyal listeners, showing that the operator has made earnest efforts in developing this new market. If the Government's policy on the development of digital broadcasting is unchanged, it should show concern for the operation of DBC in order to find out the crux of the problem. If circumstances permit, it should also mediate the dispute among the shareholders and assist DBC in complying with its licensing conditions, apart from ensuring adequate competition within the industry. These are the duties that the Government should discharge as a responsible licensor.

Secondly, the success or otherwise of the development of digital broadcasting will affect the image of Hong Kong as the broadcasting hub of the Asia-Pacific Region. According to overseas experience, the digital radio stations have to compete with traditional analog broadcasting services. It is a

tall challenge and many examples of failures can be found. I remember an article written by Mr Albert CHENG in June 2010 when he managed to obtain a license. In that article, he described his decision to invest as "a very bold and aggressive decision, and a risky investment decision". Since the Government has determined to develop digital radio broadcasting, in addition to paying close attention to DBC's operational problems, it should also examine from a macro policy perspective what measures should be adopted to promote the development of digital radio broadcasting. According to the September figures of the Global Digital Radio Broadcasting, only 100 000 units of digital radio receivers have been sold in the market and the coverage is only approximately 70%. According to the figures alone, there is much room for improvement in the infrastructure of digital broadcasting. Questions such as how to promote the development of the industry and how to publicize the advantages of digital broadcasting on the condition that public funds are not involved warrant the Government's attention and deliberation.

President, the audience and members of the broadcasting industry are looking forward to the development of digital radio stations. The audience hope that digital radio stations will introduce more options as well as diversified voices. As for practitioners of the broadcasting industry, they expect more jobs and more room for development to be brought by digital radio stations. I agree that the Government should definitely not casually intervene in disputes amongst shareholders of a commercial organization. However, "not intervening in commercial disputes" is not tantamount to "turning a blind eye". Nor should the Government merely reiterate that it will "pay close attention" to it. I think the Government should play the role as a dispute conciliator in the DBC saga and is duty-bound to assist the development of the industry. When an incident which may jeopardize the interests of the public has occurred in society, the Government should pay attention to it and try to conduct reconciliation. The live broadcast right of the Olympic Games is a very good example. President, although I oppose Mr Albert CHAN's motion, I wish to take this opportunity to reiterate to the Government that it has substantial work to do in respect of its duty to promote digital broadcasting. Thank you, President.

MR ALAN LEONG (in Cantonese): President, as stated by several Members of the Civic Party just now, the Civic Party supports the motion moved by Mr Albert CHAN today to establish a select committee under the Legislative Council

(Powers and Privileges) Ordinance (P&P Ordinance) and invoke the powers conferred by that Ordinance to inquire into the discontinuation of sound broadcasting service by DBC and related issues.

President, I believe the select committee thus set up can exercise the powers conferred by the P&P Ordinance to enquire with members of the Board of Directors of DBC, including Mr WONG Cho-bau, also a Chinese People's Political Consultative Conference delegate, and David LI, as well as Albert CHENG and Morris HO, for a more in-depth understanding of the whole story. Through this inquiry, I believe we can tell whether there is any involvement of the LOCPG, which has all along been suspected by members of the community to have done so. Relevant persons, including the employees of DBC and the Commerce and Economic Development Bureau, will be required to testify in the hearings held by the select committee. Moreover, a lot of unexposed tape recordings or documents are expected to be disclosed in the course of obtaining evidence during the hearings.

President, the DBC's discontinuation of broadcasting service involves the freedom of speech, which is taken very seriously by Hong Kong people and protected under Article 27 of the Basic Law. Originally, it was not necessary for us to invoke the P&P Ordinance to establish a select committee because of the request made by the Civic Party earlier for the authorities to intervene in this matter. The President might be aware of this, too. The area in which we called for the authorities to intervene was certainly related to compliance with the provisions of the Telecommunications Ordinance (TO). If DBC failed to operate in accordance with the licence conditions, the Government could simply have intervened in the incident under the TO. It is a pity that Secretary Gregory SO, who is present today, has all along maintained that the DBC incident is just an internal commercial dispute, and it is inappropriate for the Government to intervene. The Secretary has even claimed in the Legislative Council that government intervention will set a most dangerous precedent of interfering in the operation of commercial organizations. Today, many Members appear to have subscribed to this view of his. President, I am afraid the Secretary will make a big mistake with a slight error should he treat the DBC incident merely as an ordinary commercial dispute.

Why is this incident so special that the Civic Party considers it not an ordinary commercial dispute? First of all, President, we note that the decision

made by these shareholders is actually not at all commercial. The decision made by Mr WONG Cho-bau and his party demonstrates that Mr WONG would rather destroy everything by refusing to buy more shares or sell his shares. Moreover, he would not let others to buy his shares even if it means that he has to incur losses and quit. President, although I do not know if the Secretary considers this way of business operation pretty normal, one should not do calculations in this manner under normal circumstances. Given the hundreds of million dollars of capital invested by Mr WONG Cho-bau, one of DBC's shareholder, and his party into DBC, I believe Mr WONG, given that he is an experienced businessman, ought to have a plan to make profits if he is interested in investing in DBC and would have borne in mind that the payback period would not be short. His decision not to continue with his injection of capital was made less than one year after the official launch of DBC. Why would he make such an unusual decision? Why would he rather destroy everything than selling his shares or buying more shares, or allowing a third party to buy DBC shares?

President, such a move can virtually be described as "calling a halt before the start of a game". If the decision made by Mr WONG and his party to stop fulfilling the original shareholders' agreement and injecting capital into DBC is not an ordinary commercial decision, the underlying motive is quite interesting. President, other Members also raised a string of questions in their speeches earlier. With so many questions remained unanswered, this is precisely the reason why a select committee should be established to investigate the matter thoroughly.

President, if we made a more in-depth observation again, we would find that the reasons cited by Mr WONG Cho-bau to initially refuse the injection of capital were unclear accounts and his failed attempt to check the accounts. However, he later filed a writ in court and was issued an order to enable him to inspect the accounts. Originally, we thought that the problem would thus be resolved. When Albert CHENG and his party later proposed trading shares between the two parties, Mr WONG not only refused to sell his shares to Mr CHENG, he also refused to buy shares from Mr CHENG, or even disallowed a third party from injecting capital into DBC. It seemed that he was looking for various excuses to put an end to this radio station which was only officially launched in September 2012. Is it not interesting?

President, DBC involves not only a business pertaining to personal interest, it is also regulated by the TO and licence conditions, which involve a serious

issue of significant public interest. Without adequate justifications, Mr WONG Cho-bau and the shareholders on his side have adopted an entirely unco-operative attitude, thus making it impossible for DBC to continue with its operation. As a result, DBC was seriously punished and fined after being ruled by the Broadcasting Authority to have seriously breached the rules. In view of this point alone, the Government should already have substantial grounds to intervene in this incident to gain an understanding of the situation and mediate, but it refused to do so. As so many questions remain unanswered, the Civic Party supports the motion proposed by Mr Albert CHAN today.

Furthermore, President, just now a number of Members mentioned the disclosure of a tape recording of DBC and that its content appeared to be a discussion among Mr Albert CHENG, Mr WONG Cho-bau and Dr David LI. The recording reveals that Mr WONG Cho-bau clearly told Mr Albert CHENG that the LOCPG found the provocative criticism made by a phone-in programme host, LEE Wai-ling, against the SAR and the Chinese Government very offensive, and that Mr PENG — I believe he was referring to Mr PENG Qinghua — would like to get rid of her. He asked Albert CHENG if she could be kept under control if she really came. According to a media report later, Mr WONG Cho-bau proposed to the Board of Directors in late February that he would rather borrow \$100 million to lower the price of digital radios, so that the general public could have more chances to listen to digital radio broadcasting. At the Board meeting held in April, however, his attitude took a U-turn, and he said he had to consider whether or not he should inject capital into DBC. It begs suspicions of the election of LEUNG Chun-ying as the Chief Executive being one of the factors causing the fate of DBC to go into reverse. If a select committee can be set up by the Legislative Council, I believe an inquiry can be conducted to clarify this.

Just now, some colleagues accused us of exaggerating everything without sufficient evidence, but can this tape recording be at least accepted as *prima facie* evidence? If *prima facie* evidence is established, it means that the LOCPG might have intervened in the discussion among DBC shareholders about the operation of the corporation. It is a matter of enormous import if the LOCPG in the Western District has really intervened in the operation of DBC or even caused Mr WONG Cho-bau to stop injecting capital soon after the launch of the radio station. It will be even more dangerous if we do not conduct an in-depth inquiry into the incident and get to the bottom of it.

President, Mr WONG Cho-bau has filed a writ to the High Court and obtained an injunction order. We have been told by Mr Albert CHENG that he can tell us everything if a select committee is set up by the Legislative Council to conduct an inquiry and summon him as a witness under the P&P Ordinance. Otherwise, he cannot disclose the details of the conversation among Board members because of the injunction order. His remark seems to give us one more reason to set up the select committee, because he will then be able to tell us the full story of the incident without fear of being accused of contempt of court.

Lastly, President, Radio Television Hong Kong is now governed by an Administrative Officer and Mr NG Chi-sum, one of its programme hosts, has been eradicated. It has been three years since the applications for free television licences have been lodged, and the Citizens' Radio has waited up to seven or eight years for a licence and is now compelled to operate unlawfully. If we look at this spate of incidents together with DBC which was nipped in the bud after being granted a licence, perhaps we can see the SAR Government's attempt to stifle the room for dissidents to express their views in society, thus preventing the media as the fourth power from expanding or even causing it to shrink, with a view to creating white terror. In doing so, the media will be compelled to exercise self-censorship, whereas those with noble integrity and refusing to exercise self-censorship will be suppressed. In that event, no one will dare to monitor and criticize the Government. President, this possibility gives us sufficient ground to support Mr Albert CHAN's motion.

President, I so submit.

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

MR SIN CHUNG-KAI (in Cantonese): I rise to speak in support of Mr Albert CHAN's motion to establish a select committee under the P&P Ordinance to inquire into the DBC incident.

Concerning the Secretary's repeatedly emphases in his speech that the Government will not intervene in disputes among shareholders, actually I oppose government intervention in disputes among shareholders of commercial organizations in general, too. But obviously, this incident is absolutely not

simply a dispute among the shareholders of DBC, for political manipulation and suppression are involved in this incident. In 2003, two famous talk-show hosts in town were silenced one after another. In this incident, not only was there silencing of DBC, the radio station was also wiped out. The Government has indirectly stifled the viability of a newly hatched radio station.

From an objective point of view, if the incident is merely a dispute among shareholders, shareholders should not be reluctant to sell their shares. Every normal shareholder would hope to get back his principal as much as he could if the station was incurring losses. He would not have refused to sell his shares regardless, held on to his stakes and insisted that the radio station be forced to close down. Very obviously, it was more a move to "wipe out the radio station" than a dispute among shareholders.

Why should the Legislative Council set up a select committee in this connection? The reason is pretty clear. When the relevant persons appeared before the Legislative Council for the hearing, they all bit their tongues. When they attended a special meeting held by the Panel on Information Technology and Broadcasting in connection with this incident, however, they could not express their views because of the constraints imposed by an injunction order issued by the Court. Furthermore, a special meeting that lasted nearly six hours was also held in which more than 80 members of the public expressed their concern about the DBC incident. Hence, this incident *per se* is not only an issue of survival of a radio station, it also involves whether Hong Kong's internal governance is subject to unnecessary or political interference.

In a tape recording disclosed earlier, someone said he did not wish to see a certain person to be a presenter, and a Director of the LOCPG surnamed PENG was said to be involved. However, we must bear in mind that the Broadcasting Authority (BA) under the Commerce and Economic Development Bureau was responsible for issuing licences.

With the implementation of "one country, two systems" in Hong Kong, we have room for a high degree of freedom of speech. However, in view of the occurrence of "silencing" incidents over the past 10 years and the recent occurrence of the incident involving the "extermination of a radio station", a select committee should be set up to enable people who wish to speak to have room and right to speak. As some key figures, subject to the injunction order

cannot speak, we should create room and a platform for the relevant persons to express their views, or enable them as well as members of the public to gain an in-depth understanding of this incident to see if political suppression is involved.

In fact, people opposing this motion should take into account that, even if this select committee is set up, the findings of the inquiry will indicate that there was no suppression if suppression did not exist. In that case, they should not be afraid of the inquiry. If suppression did exist, an in-depth inquiry should be conducted. Hence, the purpose of our call today for the setting up of a select committee is to find out the truth to prevent broadcasting in Hong Kong from being subject to unnecessary political interference.

After all, the airwaves and broadcasting are often subject to political manipulation by the rich and powerful. The powers-that-be might regard a certain radio station frequently criticizing or pinpointing them as a thorn in their side and are determined to wipe it out. Hong Kong has room for freedom of speech, and the fourth power is responsible for monitoring and supervising the Government. In fact, as Legislative Council Members, we are frequently criticized by the television and radio. While we need to be monitored, there is even a greater need for the Government to be monitored.

In this incident, the Government is actually evading or concealing the truth should it oppose the establishment of a select committee — I believe the Secretary will speak later in opposition to the establishment of a select committee. It is unnecessary for the Government to object to the launch of an inquiry by the Legislative Council since it can remain neutral. Is the Government trying to conceal some facts should it speak in opposition to the establishment of a select committee? If this incident is purely an internal dispute among shareholders, as the Secretary said, the Government might as well dismiss it and let the Legislative Council conduct an inquiry as it wishes. However, this is not the case now. I believe the Secretary will indicate in his speech later that the Government opposes the establishment of a select committee. Why does he have to raise objection if, as what he said, the incident is purely a dispute among shareholders? He may say that, insofar as this issue is concerned, the Government has no opinion or stance. Although an inquiry is considered unnecessary, the Legislative Council has nothing to do with the Government even if it is determined to conduct an inquiry.

The Secretary should give us a clear explanation on why the Government opposes the establishment of a select committee. Certainly, quite a number of pro-establishment Members will raise objection, so this motion today will definitely not be passed because obviously, the Western District some pro-establishment Members are also supporters of the Western District because of their success in securing Legislative Council seats thanks to the efforts made by the Western District in co-ordinating the elections. Hence, they will definitely follow the Western District's lead. In fact, this is yet another kind of political interference.

This incident represents another move to "wipe out a station" following the "silencing" operation. We are determined to investigate the incident until the end. Nevertheless, given the "royalist" parties in the pro-establishment camp, I believe there is very little we can do. However, every step must be taken. I hope the Secretary can explain clearly in his speech later on why he opposes an inquiry. There is no need for the Government to oppose this inquiry. It need only give us a comprehensive explanation of all the facts it has grasped to illustrate what efforts have been made to monitor the fulfillment of the undertaking made by the relevant radio station in applying for a licence and whether the radio station is capable of fulfilling its undertaking during a certain period of time. As the regulator, the Government must disclose faithfully what it has done and what it should have done but failed to do so. The Government must clearly account for all this rather than opposing the establishment of a select committee. As the regulatory authorities, watchdog and licensing body, the only thing it can do is "working according to the book". According to the book, what can the Government do when a shareholder fails to fulfil his undertaking relating to his share capital and what can be regulated?

Insofar as this incident is concerned, we have also found a most interesting phenomenon, and that is, in dealing with incidents involving the media, the Government would say that it had to play a co-ordinating role when it wished to intervene, but describe the incident as a dispute among shareholders when it preferred not to intervene. For instance, several years ago, the Government appeared to be extremely worried about the possible closure of the Asia Television Limited. I recall that the Secretary at that time was Mrs Rita LAU, not Gregory SO. She came forward and expressed her grave concern about the closure of a free television station because people might then be unable to watch free broadcasts of the Olympic Games. Subsequently, Secretary Gregory SO

liaised with all the media to settle the matter step by step, so that members of the public were able to watch the broadcasts of the Olympic Games. In this incident, however, it appears that the Government has even aided and abetted the wrongdoer to expedite the "extermination" of this radio station.

There is a conflict of interests in the role played by the Government in this incident. In fact, there is actually a conflict of interests in the Government's objection to the setting up of a select committee to inquire into the DBC incident because the Government itself might also be one of the behind-the-scene manipulators causing the "extermination" of the station. Certainly, the Secretary will disagree. I hope he can argue clearly because this incident has actually gone beyond an ordinary dispute among shareholders, and it is not purely an issue of allocation of interests.

President, I have spoken in support of Mr Albert CHAN's motion.

MR FREDERICK FUNG (in Cantonese): President, in many places, digital broadcasting is a mode of new technology broadcasting which can be used for multi-channel and pluralist broadcasting. What is more, it can even be broadened to allow members of the public to occupy a certain channel to make their voices heard.

It is true that investors of digital broadcasting face a greater chance of incurring losses than reaping profits, especially in Hong Kong where digital broadcasting was founded under such a desolate situation and has just started to develop. I guess investors will reckon that they have to face a period of tough time before digital broadcasting can be developed into a public-based network and then a lucrative business through advertisement proceeds.

In the long run, I think Hong Kong should develop digital broadcasting. I am quite positive about this, too. However, it is difficult to look for investors initially. Since some people are willing to found a corporation to develop digital broadcasting, we should give them a big applause as well as some non-business support or assistance or streamlined procedures by making fewer rules which make it difficult for them to develop digital broadcasting.

Hence, President, we can see that the operation of a digital broadcasting station is like a cake with two sides. In other words, it is not simply a business. In addition to ensuring that the business can be operated in a self-financing manner or even to reap profits, businessmen might be required to make investments, and they can reap profits only after investing for a period of time. Nevertheless, digital broadcasting *per se* can be described as a tool or a goal because, when the digital broadcasting service is launched, it will be broadcast to only a small number of people. However, when its network expands and widens, it can reach a large audience. Here I am referring to messages, information and dissemination of concepts. Digital broadcasting as a tool can even be used to enable people to gain a comprehensive understanding of diverse views, public opinions, and even things related to freedom of speech.

Hence, it is very worthwhile for us to promote and publicize digital broadcasting as a tool if it is not subject to any restrictions or manipulation, and it is allowed to be used under all circumstances. Since the Government has given permission for this licence to be issued, I hope its mindset is similar to mine as I mentioned just now. So, in theory, when the only digital broadcasting corporation in Hong Kong is in trouble, should the Government keep its arms folded and trample on it or help it resolve problems which might be unrelated to interest? What it should do includes understanding, care, co-ordination, mediation, and so on. I think that if the Government still takes the development of digital broadcasting seriously, it should at least not keep its arms folded — not to mention trampling on it — I will disagree even if it merely keeps its arms folded.

In the entire incident, what has the Government done? There are a lot of problems. If some shareholders have undertaken to make investments but failed to do so on time, why did they not do so? Have they flouted the rules?

President, as pointed out by many colleagues just now, in the entire incident, there are only two issues which impress us as sensitive, worrying and nerve-racking. One is the tape recording issue. In a tape recording, Mr WONG Cho-bau mentioned that he did not want LEE Wai-ling to be hired by DBC and then he cited some remarks made by Mr PENG. Of course, such remarks are not only sensitive, they have also aroused concern that it is not purely a matter of business and politics are also involved because the discussion was

about expression of views rather than profit and loss. What is more, a restriction of the expression of certain views was discussed, too.

As for the second issue, it is strange and surprising that even though Mr WONG Cho-bau considered that the business was unprofitable or losing money, or it was not worthwhile for him to continue operating it, he refused to acquire shares from other shareholders, sell his own shares or allow someone to acquire stakes to enable DBC to continue with its operation. From another angle, he was determined to destroy DBC to ensure that it could not continue to operate. Was it due to deep hatred or other underlying factors that he had to destroy DBC? This is very interesting indeed. We must investigate this clearly, for there might be 10 000 stories behind it.

Obviously, Mr Albert CHENG's motion seeks to clarify the situation and questions I mentioned just now. Certainly, many people will ask me these questions — some journalists have also asked me the same questions — Do you support the pan-democracy camp and "Tai Pan" because you are a pan-democratic Member? Since "Tai Pan" always criticizes the Government, is he helping you? Is he really helping pan-democratic Members? This is not so, in my view. Many of his articles were aimed at scolding pan-democratic Members, including me.

Let me give Members a brief idea of certain backgrounds. In the programme "News Tease" in 1994, I was severely attacked by "Tai Pan" and "Yuk-man". In another Commercial Radio programme, I was attacked again by "Tai Pan". Even in the Legislative Council Election, "Tai Pan" compared me to a cockroach — Members should know that cockroaches are so horrible that women will be frightened to death when they see one. Certainly, there were things like this — we were teased and attacked by "Tai Pan". Of course, I was unhappy when I was being attacked, and I wished to argue with him. But actually, it is good to be scolded, for the persons who scold you can precisely pinpoint your problem. They can also precisely pinpoint your weaknesses and tell you which areas you must seek change or reform expeditiously.

On the contrary, if we look at it from another perspective, the fact that people enjoy the freedom to praise or criticize does show that Hong Kong is a pluralistic society. Different from the Mainland, Hong Kong is a free society. Under "one country, two systems", Hong Kong is precisely the place where the second system is practised. Hence, I do not see anything so serious that "Tai

Pan", "Yuk-man" and even LEE Wai-ling have to take themselves off the air, such that they have to stop hosting programmes and speaking out on the radio. I can absolutely not see the reasons. On the contrary, I, Frederick FUNG, have been subject to criticisms since 1994, and I am still a Legislative Council Member. The more I am criticized, the more supporters have come to me. Now, I have even become a super District Council member. Hence, I think that there is no need to worry too much about being criticized. If you are right in all respects and you have not told lies after lies, erected many illegal structures or dug holes on the ground, there is absolutely no need to worry.

President, there are also some very special circumstances, and that is, DBC and ATV were given very different treatment by the Government. First of all, as mentioned by Mr SIN Chung-kai just now, when ATV was in trouble, the Government hurried to give it a helping hand. Although the example of the broadcasts of the London Olympic Games was not necessarily the same, ATV was again offered assistance. All in all, we can see from these two incidents that the Government actually hopes to see diversification of the media industry in Hong Kong, to prevent it from being dominated by one digital broadcasting station or even having none. Obviously, if the DBC incident cannot be settled, DBC will have to fold. Under such circumstances, not only will the corporation suffer losses because the talents recruited, the equipment used and the efforts made are the result of efforts and experience accumulated over a period of time, even though DBC was launched only several months ago and officially launched its broadcasting service more than 20 days ago.

Do Members consider it possible for the private dispute or discord between one or two shareholders to have led to the closure of DBC, as claimed by members of the community? Is the dispute really so serious that DBC must wind up? Since some shareholders no longer wish to operate the business, why do they not allow someone else to do it? Since they find it impossible to reap profits, but if some people believe they can do so, why do they not allow others to make profits? The market is often like this. When share prices fall, some people will sell or buy shares. Even if you consider your business unprofitable, some people might wish to take over it. Every business is like this. A restaurant might close down today but start all over again tomorrow. Most importantly, a businessman should absolutely not respond in this manner. This is also one of our major justifications for getting to the bottom of the matter.

For me, President, it is absolutely not because of my support for certain people or for the sake of friendship that I support the motion. I have even frequently engaged in debates with "Tai Pan". Very often, we might even reject each other. In a pluralistic society, however, we precisely have to accommodate and accept all this and do not allow it to disappear. It is all the more worrying should all this disappear.

Hence, in this incident, we must identify the problems as well as the crux of the problems. Moreover, if the Government still has other functions to perform, especially when it comes to certain businesses described by me as a cake with two sides just now, then it should not look on with folded arms, still less, dealing DBC a further blow.

President, I support the motion.

MR WU CHI-WAI (in Cantonese): President, the issue of digital audio broadcasting actually stems from the opening up of the airwaves for broadcasting in Hong Kong. Despite the numerous disputes in the opening up of the airwaves, we have not seen the Government play an active role in supporting and promoting the development of digital audio broadcasting over the years. Hence, the spectrum in the sky now is still limited. As a result, the number of broadcasting stations in society is still limited and they compare far less favourably than those in other cities and countries.

Digital audio broadcasting, which is a breakthrough in broadcasting, enables the airwaves with a limited spectrum to accommodate more radio channels. However, in the incident involving DBC, the SAR Government has no intention to take the initiative to intervene and mediate despite its awareness of the presence of problems, why? Is it because the authorities do not wish to open up the airwaves?

It is already the major trend of globalized social development to open up the airwaves to accommodate more radio channels. In this progressive city, also a self-proclaimed metropolis, we have instead chosen to go against the trend. Does the SAR Government think deep its mind that it should not promote the diversified development of radio stations?

In the DBC incident, the approach taken by a DBC shareholder, Mr WONG Cho-bau, is baffling. When he found that his company seemed to be incurring losses, he refused to inject capital and he was unwilling to let go, thus arousing suspicions that he merely hoped to return the licence to the Government after DBC has gone bankrupt, so that the Government could continue to restrict the issuance of such licences. Is this a conspiracy theory? Is it what the Government would like to see?

The Government often says that it wishes to promote a creative society. In fact, what a creative society needs is precisely diversified voices, accommodation of different views or criticisms and a variety of recreations, whereas a platform is required for the exchange of such views. Prior to the popularization of the Internet, we could see that people were connected in the airwaves through the radio and hoped that a greater variety of radio channels could be made available to enable exchange of views, be they majority or minority views, among members of the public.

Given the pervasiveness of the Internet nowadays, the exchange of views online is certainly possible. But undeniably, radio broadcasting as a medium that still plays a crucial role in the dissemination of messages. This is precisely the core reason why this motion expresses hope for this incident to be investigated thoroughly. It is because if the Government wishes to restrict our freedom of speech without any intention of opening up the airwaves, it may impose restrictions on us by way of drying us up rather than by obvious means. This is precisely our greatest concern.

The DBC incident also involves intervention by the LOCPG. This concern also directly reflects people's lack of confidence in the Government during this period, suspecting the LOCPG's intervention in Hong Kong's internal affairs. However, the Government's reluctance to take the initiative to mediate has obviously given people the impression that it is trying to hide the truth. Why did the Government do so? If the Government continues to deal with social problems without directly addressing matters considered by people to be undesirable and, on the contrary, act evasively as well as responding to the public with some specious answers, such as using commercial disputes as an excuse to justify its decision of not to intervene in the DBC incident, such an inconsistent attitude will only fill the entire society with the conspiracy theory. This is an

undesirable consequence of the Government's refusal to address the problems squarely. What good will it do to the governance of the SAR Government?

We all wish to break the conspiracy theory and resolve problems through rational debates to achieve the goal of consolidating views of society into a consensus direction. But unfortunately, the SAR Government and the pro-establishment camp often seek to conceal everything in the hope of deciding the outcome through voting. Nevertheless, doing so is like muffling one's ears while stealing a bell. It is not going to work because the bell will still ring even though one's ears are being muffled. I earnestly hope that, in considering this matter, colleagues can understand that it is not purely a commercial dispute. If it is so, the relevant shareholders should resolve problems from a commercial angle. At least, they will either buy or sell shares.

The SAR Government attaches great importance to the licence issued to DBC, for it had taken a very long time before the licence was issued — a trial run was conducted in 1998 and the licence was not issued until 2008. Moreover, the licence term spans 12 years. Come to think about this. It is actually a crucial licence, and it represents a breakthrough, too. Why should we nip it in the bud? If we cannot convince the public that this is purely a commercial dispute, the move to nip it in the bud will only make the public lose even more trust in the governance of the SAR Government. What is the point of doing so?

Actually, we think that an inquiry should be launched. However, it does not mean that we consider this not a commercial dispute. It is incumbent upon us to take evidence, inspect relevant documents, and listen to the views and justifications of the relevant parties before offering an explanation to the public to clarify if DBC's discontinuation of broadcasting service is merely a commercial dispute. Is this not what Members are delighted to see?

Honourable colleagues, I really think that society has been filled with a conspiracy theory. This will not do Hong Kong people any good. If the Government, the pro-establishment camp and the royalists adopt such an attitude in dealing with this issue, society will be filled with a conspiracy theory and the authorities will also be led by this mentality. Furthermore, our consideration of the policy will be swayed by this mentality, too. Such a direction of development is one we must not and should not take.

Defending the freedom of speech and fostering open airwaves are the common goal of many people. They also represent the views consolidated by the SAR Government following its publication of a consultative document in 2000. Nevertheless, digital broadcasting has come to a halt after just a small step. So, how can it take the next big step?

President, I have spoken in support of the original motion. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): President, here is an excerpt from the "Digital Audio Broadcasting" website under the Commerce and Economic Development Bureau: "The launch of Digital Audio Broadcasting service will mark a new era of broadcasting development in Hong Kong and provide a novel experience for radio listeners. Three broadcasters, namely Digital Broadcasting Corporation Hong Kong Limited, Metro Broadcast Corporation Limited and Phoenix U Radio Limited, have been granted sound broadcasting licences to provide round-the-clock Digital Audio Broadcasting services. Together with Radio Television Hong Kong, a total of 18 channels in digital format have either been launched, or will soon be launched. The programme genres cover music, lifestyle, current affairs, finance, community news, art and culture, and so on. Broadcast in different languages, these programmes offer high-quality entertainment and information services for the general public."

President, this excerpt reflects the Government's positive view on the development of digital broadcasting and states its benefits, that is, "Broadcast in different languages, these programmes offer high-quality entertainment and information services for the general public". Since the Government takes digital broadcasting so seriously, why did it look on with folded arms when DBC was in financial trouble — Albert CHENG reiterated every day that his financial difficulties could be overcome with an additional injection of \$50 million only.

Although DBC is on the brink of discontinuing its broadcasting service today, the Government still insists that the incident is merely a commercial dispute, hence there is no way for it to intervene in or deal with the matter. Despite the Government's previous remark that it would keep a close watch on the incident rather than turning a blind eye to it, what does the Government watch out for? There has been no reply from the Government in this connection — the

Government's only concern might just be whether DBC will discontinue its broadcasting service. It has merely said that DBC will be fined under the Broadcasting Ordinance if its service is discontinued. So, DBC might end up being fined only.

The Government's reply has simply failed to echo the remarks read out by me just now about the launching of "a total of 18 channels in digital format". The Government's priority is the provision of 18 channels, not the discontinuation of broadcasting service by any broadcasters. Why did the Government not maintain DBC's digital broadcasting service? President, despite the questions raised by the general public continuously, the Government has yet to give a reply.

Just now, a number of colleagues repeated the Government's statement that the incident is merely a commercial dispute involving problems between shareholders, hence it is inappropriate for the Government to intervene in the matter, and the shareholders should be left to deal with their problems on their own. However, this is absolutely not the case. According to many colleagues, the incident is not purely a commercial dispute. Moreover, several issues warrant our attention: First, since the airwaves are involved, the incident is not just an ordinary commercial dispute. In other words, the "freedom of speech" is involved, as mentioned by Members earlier. Moreover, was the LOCPG involved in the incident? Things like this are closely related to us. Hence, how can the Government use "commercial dispute" as an excuse to cover up everything? In my opinion, the only reason for the Government to turn a blind eye to the incident is that it is worried about the development of DBC possibly posing an obstacle to its administration. This is the crux of the matter.

If Members care to think about all this, they will find that this is really the case. Why did 500 000 people took to the streets in 2003? Although the deepening of social conflicts at that time might be one of the factors, Members must not dismiss the appeals and criticisms made by the two radio stations at that time — including the programmes hosted by Albert CHENG and WONG Yuk-man. Every day, the two radio stations pinpointed cases of maladministration on the part of the Government to encourage the public to stage protests to express their wishes. In the end, more than 500 000 people took to the streets to express their dissatisfaction with the Government, which eventually led to the stepping down of TUNG Chee-hwa on the grounds of leg pain.

I believe a large number of people will turn up in the march to be held on Sunday, 1 January 2013, demanding the stepping down of LEUNG Chun-ying if appeals are made by radio stations or famous talk-show hosts today. It is precisely for this reason that the Government feels frightened and hence leaves DBC to close down. It is because it is better for DBC to cease operation, as it will then be unable to stand in the way of the administration by the SAR Government. This is the Government's approach. I think the Government had better tell us frankly. Why does it try to divert our attention by alleging that the incident is just a commercial dispute and hence we should not intervene in the problems between the shareholders? The truth of the facts has actually been revealed with the disclosure of the two tape recordings of the Board meeting. How can the Government bury its head in the sand like an ostrich and pretend that it does not see anything? There is no way that the Government can act in this manner, because in reality, the incident really involves political issues. I would like to appeal to colleagues to stop using such expressions as "commercial dispute" or "problems among shareholders" and citing them as an excuse to justify that we should not deal with the incident. Obviously, political issues are involved. How can Members evade them?

The Government is so evasive because it is afraid that the truth will come out. What will happen to the future governance of Hong Kong if a thorough investigation into this incident confirms intervention by the LOCPG? The Government dares not face it because it is worried. However, it is all the more necessary for us, as Legislative Council Members and, in particular, elected Members, to address this issue. Do we intend to surrender our right to govern Hong Kong? Do we intend to allow the mastermind behind the scene to freely override Hong Kong's autonomy and thus we have to turn a blind eye to the incident?

The conduct of an inquiry into this incident can actually reinforce Hong Kong's autonomy. The principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" do not purely affect the operation of a radio station, they also affect the most crucial belief underlining the operation of the entire Government. The DBC incident proves precisely this view of mine.

If Members wish to safeguard the principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", they must support this motion to

allow the Legislative Council to get to the bottom of the incident and find out if there is any mastermind behind the scene influencing the airwaves. Otherwise, the principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" we mention will be reduced to empty phrases only. Members must safeguard these three principles because I am worried that there is a mastermind behind the scene influencing Hong Kong's future governance, and Hong Kong will lose its autonomy as a result. Hence, we must not cave in today.

Certainly, the airwaves are the free space we fight for to allow us to express our views. Our different voices serve as a means to monitor the Government, Legislative Council Members, and social issues. Most importantly, we monitor the way in which the airwaves are administered, the Government's philosophy of governance, and whether the Government is really capable of safeguarding such major principles as "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy".

President, the motion today is most crucial. The conduct of an inquiry can not only dig out the truth to enable Members to find out if there is any mastermind behind the scene, but also demonstrate the very existence of our political beliefs. Furthermore, many people believe that if this Council does not conduct an inquiry, the truth will not come out and people being accused at the moment might be wronged. To prevent this from happening, it is all the more necessary for Members to give total support to this motion, so that this Council can conduct an inquiry to dig out the truth and prevent people from being wronged. Why do Members not do so and, on the contrary, evade the matter and conceal the truth?

An inquiry, if conducted, can reveal the truth of the incident, so that we can tell the difference between facts and fiction as well as good and bad and know the truth clearly. Why do Members have to conceal the truth? What are Members afraid of? Are Members afraid of digging out the truth? Otherwise, why do Members not support this motion?

President, I so submit.

MRS REGINA IP (in Cantonese): President, I rise to speak in opposition to invoking the Legislative Council (P&P Ordinance) Ordinance (P&P Ordinance)

to inquire into the closure of the Digital Broadcasting Corporation Hong Kong Limited (DBC).

In my view, invoking the P&P Ordinance to conduct inquiry involves several principles. First, a number of colleagues have expressed doubts in their earlier speeches if the discontinuation of the broadcasting service of DBC involved political conspiracy. Some colleagues meanwhile consider that the LOCPG is involved and the Government has failed to render assistance. I doubt whether there is conclusive evidence proving that such statements are true.

Moreover, some colleagues queried why the Government has not rendered assistance. Mr LEUNG Yiu-chung asked just now why the Government did not help as DBC was only short of a small amount of money? In this connection, Members should review the history of Hong Kong of over 100 years, where closures of commercial organizations had occurred time and again and even large banks run into financial difficulties. At issue is whether or not the Government should render assistance once it notices that certain commercial organizations or enterprises are short of money, be it tens of million or hundreds of million dollars. Is this a proper approach?

I think the provision of assistance involves an important principle and the concern of moral hazard as pointed out by economists. If enterprises encountering difficulties, say losing the market and customers, are to request the Government to provide assistance, it may result in a large number of enterprises with no chance of achieving success to seek assistance from the Government, which will eventually render society being obliged to spend a lot of resources on providing such assistance. This is one point.

Second, some colleagues pointed out that under the existing broadcasting policy, the Government should introduce more participants if it intends to liberalize the market. At the debate of this Council held last week on the motion on "Domestic free television programme service licence applications", Members had discussed the issue of liberalization of the broadcasting service market. I pointed out at the time that the broadcasting industry and the telecommunications industry were virtually twin sisters. In the 1990s, due to technological development, there were intense calls for the liberalization of the market in Hong Kong, following the international trend. By the middle of the 1990s, the

telecommunications market in Hong Kong was liberalized. At that time, the development of the market was thriving and consumers had truly benefited from it.

However, the liberalization of other markets may not necessarily be good. The airline industry in the United States experienced the so-called "open skies" upon the liberalization of the market. There was a mushrooming of enterprises, particularly budget airlines, which resulted in such problems as safety concerns, disputes between employers and employees and commercial problems. Some enterprises indeed failed in their operation and wasted social resources.

Another example involves an area in which Hong Kong has direct experience, and it is the liberalization of the financial services market. I will again cite the American example. In the past, the United States had been imposing very stringent regulation on the financial market. It had enacted the Glass-Steagall Act to prohibit banks from engaging in investment banking business. However, the requirements under the Act were lifted gradually, thus enabling banks to engage in investment banking services. Many people pointed out that this is one of the causes of the Lehman Brothers crisis in 2008.

When colleagues urge the Government to offer assistance once noticing DBC is on the brink of closure or to liberalize the market by all means, they should consider one point: When an enterprise is incapable of surviving, should the Government use taxpayers' money to rescue it? What role should the Secretary play in mediating or assisting the negotiations between the enterprise and its shareholders? Besides, will the liberalization of the market bring about economic benefits to society as a whole?

I certainly agree that new technology should be fully utilized, and it is the aspiration of the public for more digital broadcast channels. I hope the Secretary will give a response on the future development of digital broadcasting later when he speaks. If other applicants apply for licences to operate digital broadcasting radio stations in future, will the Secretary give the approval when the applicant meets the criteria? Upon the discontinuation of broadcasting service of DBC, does it imply that Hong Kong will not have any multi-channel digital broadcasting radio stations and the public will be deprived of the choice of digital broadcast channels forever? I hope the Secretary will respond to this later.

Finally, I would like to reiterate, as I have stated repeatedly in the past four years, that invoking the P&P Ordinance to conduct an inquiry is tantamount to using the "nuclear weapon" of the Legislative Council, which is a very powerful weapon. For an inquiry by the select committee set up according to the P&P Ordinance will be carried out as of the case in the Court, where the committee is given the power to summon witnesses and order them to produce the relevant documents. Given the legal technicalities involved in the course of the inquiry, witness summoned by the select committee may give their answers through their lawyers. In the inquiry of the Lehman Brothers case, similar situations had arisen, where the Securities and Futures Commission employed Senior Counsel to wrestle with the select committee at closed meetings. Since invoking the P&P Ordinances to conduct an inquiry will use up tremendous resources of the Legislative Council, which will indirectly lead to the consumption of social resources, I consider this power should not be exercised lightly.

The discontinuation of the broadcasting service of DBC after all involves a commercial dispute. Apart from hearsay, there is no concrete evidence indicating political interference. Hence, the New People's Party disagrees to invoking the P&P Ordinance to conduct an inquiry.

I so submit. Thank you, President.

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

MR WONG YUK-MAN (in Cantonese): President, Chinese is the most used language in the world and more than 100 million people around the world speak Cantonese. Hence, theoretically, it is a promising business to operate Chinese-language newspapers or electronic media in Hong Kong.

However, unlike the vast majority of the English-speaking communities around the world where the freedom of speech is enjoyed, the Mainland, which is inhabited by the majority of the Chinese-speaking population in the world, enjoys no freedom of speech. Moreover, the freedom of information is curbed by the government. Hence, the majority of the electronic media and printed media in Hong Kong can only be confined to the territory, a small place with a population

of 7 million. It is indeed a pity. Although Hong Kong is very close to the Mainland and the latter is our sovereign state, only Chinese language is used in such an enormous country and only Hong Kong movies can make their way into the Mainland market.

Hong Kong's media ecology is very strange indeed. In the past, thanks to the exodus of scholars to the south to avoid persecution by the autocrat, the printed media was very prosperous in Hong Kong. In view of the ageing population and the loss of readers over the past decade or two, however, the operation of the printed media appears to be increasingly difficult. Nowadays, only several newspapers sell like hot cakes at newspaper stands. The majority of newspapers sell poorly, not to mention the current availability of free newspapers. Our patriotic camp has been compelled to read such newspapers as *Wen Wei Po*, *Ta Kung Pao*, *Hong Kong Commercial Newspaper*, and even a free newspaper · *Xin Wan Bao*. Even though *Xin Wan Bao* is distributed free of charge, nobody would like to read it. Should Members care to visit newspaper stands for a look — I often do so because I know some newspaper hawkers very well — they are compelled to take three copies of *Wen Wei Po* and *Ta Kung Pao* every day but, at the same time, they have to return three copies of them. These newspapers waste enormous resources because all of them are mouthpieces of the communist party.

Hong Kong's media ecology is very strange, and so is the Chinese-language media. However, the electronic media is even more abnormal. The recent storm over the television stations has turned into a farce and, in this connection, a motion debate was held last week in which I spoke on the motion, too.

Let us come back to this motion today. In March last year, DBC, Metro Broadcast Corporation Limited (Metro) and Phoenix U Radio Limited (Phoenix U) were each granted a 12-year digital broadcasting licence by the Chief Executive in Council. Later, DBC undertook to invest \$600 million during the first six years. The Government's willingness to open up digital broadcasting was one of the policies of the former Chief Executive which is quite worthy of praise.

Between May and June last year, trial runs of the various DBC channels were conducted. In May this year, the broadcasting services of the seven DBC

channels were fully launched when LEUNG Chun-ying, not Henry TANG, happened to take office as the Chief Executive. As a result, DBC made focused efforts to lash out at LEUNG Chun-ying. Members listening to the reruns of its programmes can tell that DBC was like an "anti-LEUNG Chun-ying" station because its criticism of LEUNG Chun-ying was very sharp. On the day before LEUNG Chun-ying took office in June, shareholders Mr WONG Cho-bau and Dr David LI, however, made a sudden announcement of suspending their injection of capital. During an interview by the *Hong Kong Economic Journal* in August, Mr WONG Cho-bau emphasized that the incident was purely a commercial decision that had nothing to do with politics.

On 20 October, DBC employees launched a seven-day voluntarily broadcasting campaign outside the Central Government Offices, during which two tape recordings were broadcast. As the recordings were already mentioned by many colleagues just now, I do not wish to repeat them here because I have a lot more to say. Recently, different accounting teams were sent by individual members of the Board of Directors to station at DBC for forensic auditing. Upon the completion of the auditing, the so-called DBC founder, Albert CHENG, and DBC Chief Executive Officer, Morris HO, ran a full-page newspaper advertisement reading "Justice done" in response to WONG Cho-bau's earlier accusation of them for confusing accounts and poor management and the fact that justice have been done following the forensic auditing.

I have merely given a brief account of these two incidents. I will not comment on them further because I am not looking at this matter from the angle of commercial disagreements or disputes among shareholders.

DBC is a broadcasting station. Hence, it is a public instrument, not purely a personal property. The survival or otherwise of DBC is not purely a matter of interest between shareholders Albert CHENG and WONG Cho-bau because DBC is a social instrument. Why should DBC be regarded as a social instrument? It is because, after being granted a licence by the Secretary, DBC must comply with some licensing requirements. Therefore, it should be regarded as a social instrument.

Regarding the newspapers I mentioned just now, namely *Ta Kung Pao* and *Wen Wei Po*, *Ta Kung Pao* was formerly known as *Ta Kung Pao*, too — it was

truly "*Ta Kung Pao*¹" at that time but now it should be called "*Ta Si Pao*²", as it is currently a communist party newspaper. Thanks to the founders of *Ta Kung Pao*, namely, ZHANG Jiluan and HU Zhengzhi, this community newspaper was the most influential newspaper during the War of Resistance. When ZHANG Jiluan founded the newspaper If I have a chance, I would like to ask the younger brother of the President, TSANG Tak-sing — he used to be the editor-in-chief of *Ta Kung Pao* — whether he knows what the "four nos" meant by ZHANG Jiluan when he founded *Ta Kung Pao*. The "four nos" meant to say no to "relying on political parties", "blindly following the masses", "selling anything to tycoons and businesses" and "serving as a personal instrument". Unlike the media nowadays, a social instrument was not supposed to be used for personal purposes back then. What did the "four nos" mean? It meant that the newspaper was a social instrument. As such, it transcended a newspaper published by the two scholars, namely ZHANG Jiluan and HU Zhengzhi, as well as their survival and interest. At a time when the War of Resistance was imminent or during the War, the newspaper was literally boosting the people's morale for the revival of the country and the people.

Having said that, I think Chinese newspaper publishers nowadays — I will not comment on those on the Mainland for the time being for they are all mouthpieces of the communist party — the Chinese-language newspaper industry in Hong Kong is using a social instrument for personal purposes. Newspaper publishers merely know how to make money without any ideals. This is why we miss those newspapers published by scholars in China in the past, for they truly had the country, the fate of the country and the lives of the people in their hearts when publishing newspapers. Hence, the newspapers at that time were truly social instruments.

Years ago, there was a well-known press publisher called CHENG Shewo. When he was a journalist, he criticized WANG Jingwei, the then President of the Executive Yuan of the Nanjing government all the time. When WANG Jingwei threatened to arrest him and put him in jail, CHENG Shewo said, "President, I can be a lifelong journalist. Can you serve as a lifelong President of the Executive Yuan?" When I was a teacher, I often told my students this story to let them know that being a media reporter is a lifelong vocation rather than a job.

¹ "*Ta Kung Pao*" literally means a "newspaper of justice".

² "*Ta Si Pao*" literally means a "newspaper of selfishness".

Hence, regarding the DBC's discontinuation of broadcasting service, our key concern is that DBC is a social instrument. Its sudden discontinuation of broadcasting service involves the flow of information, freedom of speech, political intervention, and so on. Like a law of physics, the sparking of controversies is inevitable.

Although Albert CHENG and I were former colleagues and good friends, I did not approve of everything he did. Nevertheless, these are separate issues. On 26 October, that is, less than 10 days after the first meeting of the new-term Legislative Council was held, the Panel on Information Technology and Broadcasting, which was chaired by me, convened a special meeting and invited Secretary for the Commerce and Economic Development Gregory SO, representatives of the Communications Authority, DBC founder Albert CHENG, DBC Chief Executive Officer Morris HO, and DBC staff representatives to attend. In addition to the queries raised by the management and employees of DBC as well as Members about why the Administration could have looked on with folded arms, a motion was also proposed by Mr Albert CHAN of the People's Power in the meeting calling for the establishment of a select committee under the P&P Ordinance.

At that time, some Members had left the conference room, and some, including Mrs Regina IP, did not realize that the motion would be put to a vote. With the outcome of the vote turning out to be nine against eight, the motion was passed by the Panel on Information Technology and Broadcasting. Then, I followed the procedure and proposed the motion in the House Committee. Nevertheless, it was eventually negated. This time around, Mr Albert CHAN has proposed this motion once again at the Council meeting for powers to be invoked under the P&P Ordinance to inquire into the incident involving DBC's discontinuation of broadcasting service.

Both I, as a Legislative Council Member, and the People's Power have made our utmost effort. In my personal capacity on the eve of the elections, Albert CHENG allowed the chairman of Next Media, Jimmy LAI, who also provided financial support to the Democratic Party, to publicize Democratic Party candidates on his radio programmes to influence the elections. Despite the fact that Jimmy LAI himself has already had an enormous media platform, it is surprising that Albert CHENG should have allowed him to publicize Democratic

Party candidates on his radio programmes for four days in a row. I very much detested his actions.

Notwithstanding this, I think this is only a feud between Albert CHENG and us on a personal level or the People's Power. As business is business, we must find out the truth. Hence, even if he treats me unjustly, I will still repay injury with kindness. The question being discussed here today will definitely be negated. We are only fighting with overwhelming courage to continue to dig out the truth for the sake of defending the freedom of speech.

President, initially, both the Sino-British Joint Declaration and the Basic Law did not stipulate clearly the duties of the Xinhua News Agency in Hong Kong after 1997. In the beginning, it was just a news agency. I believe the President knew it very well that the Xinhua News Agency in Hong Kong was a *de facto* Hong Kong and Macao work committee of the Communist Party of China (CPC). In 2000, it was renamed "Liaison Office of the Central People's Government" or LOCPG. Now, everything is related to it in some ways. Even Paul TSE's election victory was attributed to his connection with the Western District as its "godchild", though this has been denied by him. Why did people say something like that? For instance, someone would be called a "god daughter of the Western District", and someone would then be called a "god son-in-law of the Western District". It turns out that there are "god brothers", too. In short, everything has been turned upside down. Actually, I have to tell Members that the Hong Kong and Macao work committee of the CPC is also known as the LOCPG or the Western District — the Western District represents a geographical demarcation, whereas the LOCPG is actually operated by the CPC. In any case, Hong Kong people can hardly accept the Western District imposing dictates on Hong Kong politics.

Though the imposition of dictates is no good, blatant intervention is even worse. As everybody knows, the LOCPG has even gone so far as to express concern about chairmanship of the Legislative Council — though I will not call it intervention for the time being. Hence, Hong Kong people are really a bit afraid of and have great misgivings about such a weirdo. In fact, the establishment of a select committee by the Legislative Council under the powers conferred by the P&P Ordinance to inquire into the discontinuation of sound broadcasting service by DBC and related issues can also give us an opportunity to clear the LOCPG of its name or collect evidence of the crime it has committed.

President, I still wish to point out that many Members have called on the Government not to intervene today. So, what role should the Government play? Actually, this motion today has nothing to do with it. Today, it is the Legislative Council which seeks to intervene in DBC's discontinuation of broadcasting service because the motion is proposed by a Legislative Council Member for the establishment of a select committee. Members must get this right. What the Government can do is limited. This I must admit. Today, Legislative Council Members will exercise their powers (*The buzzer sounded*)

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

MR PAUL TSE (in Cantonese): President, we may choose to dislike the LOCPG in "Western District". I, like many members of the public, dislike intervention by the LOCPG, the "Western District". Despite that, I have to find a proper example to justify my view. We should not chase after the shadow time and again, and by all means try to kindle a fire when we just see the smoke. We should know that we have to shoulder a lot of responsibilities. We have to guard this gate. As Mrs Regina IP and many other colleagues said earlier, this is the "Imperial Sword", which is also the "Imperial Shield". As Mr Albert CHENG brazenly stated, since he could not make any statement due to the injunction order, he hoped he would be granted the "Imperial Shield" so that he could speak freely to censure any person he considered deserved and to take revenge on any person he wanted. Should not the Legislative Council be very cautious in handling such a relationship of labyrinthine complexity? Even Mr WONG Yuk-man said earlier that the case involved an entanglement of love, hatred, favours and grievances. It is hoped that we can observe the incident with a sober mind and try to disentangle the case step by step.

President, I do not support this motion for several reasons. Firstly, as in the case of KAM Nai-wai, which I have cited as an example a number of times, there is no defendant but only the plaintiff in the present case. We say that there has been intervention, but who has been intervened? If Mr Albert CHENG has been subject to any intervention, direct or indirect, from the LOCPG, he may lodge a complaint to this Council and we will launch an investigation immediately. However, if Mr WONG Cho-bau refuses to say anything or

participate under this circumstance — on the supposition that he had made the remark — how can we press the charge against him? As in the case of the KAM Nai-wai incident, it will only be a waste of time.

President, secondly, the exercise of any power and privilege under the Ordinance must be based on incidents involving significant public interest or dereliction of duties on the part of the Government in various measures, which gives us ample justification to set up a select committee to inquire into the case. In the present case, the Government is simply following the rules in regulating the structure according to the relevant requirements. The Government considers it inappropriate to participate in the mediation or negotiation among the shareholders at this stage, no matter right or wrong Indeed, we do not encourage the Government to do so hastily, unless it is acting out of a very important reason. Regarding the two examples cited by Members earlier, that is, the Asia Television Limited (ATV) case and the Olympic Games case in the past, they are not appropriate examples. In the case of the Olympic Games, it did not involve intra-company affairs, or affairs among shareholders. It was not about the internal affairs but inter-company affairs of a company, and the mediation among different media organizations was carried out with a view to protecting the public interest.

Concerning the case of ATV, as far as I understand it, the shareholders had raised no opposition at the time and they were relatively willing to accept the involvement of the Government. In fact, to my understanding, the Government had discussed the incident with the parties concerned, as acknowledged by Mr Albert CHENG, to see what the Government could do, and Secretary Gregory SO has raised no objection to this point. But subsequently, the Government did not take part in the meditation among the shareholders further. Hence, a *prima facie* case of dereliction of duties on the part of the Government does not exist in the present case.

President, thirdly, some colleagues, including Mr Alan LEONG, said that preliminary evidence had been obtained, for we had a tape recording, though the recording is unclear and only some murmuring sounds are heard. However, we are uncertain about the source of the tape, whether the whole or any part of the tape has been edited and when the recording was made. Certainly, some colleagues said that these were adequate to serve as the preliminary evidence, and

an investigation was to be conducted to collect more evidence, otherwise, the investigation would be unnecessary.

However, anyone who has some respect for the rule of law, including Mr Alan LEONG, should know that the inquiry mechanism should not be triggered once some evidence is available. Particularly in the case of the Legislative Council, where we are required to have a *prima facie* case to form the foundation for further investigation, or that the case stands valid on this reason when there is no case to defend. If an investigation is conducted once some evidence is available, it is fishing, which is only an attempt to kindle a fire from the trace of smoke, hoping that the fire will burn more fiercely. But this is not the right attitude to be held by any judicial organ in investigation. Or else, the Legislative Council may stick its nose into many cases and conduct an investigation once it smells something. In that case, many issues will be subject to investigation. If an investigation is conducted on the ground that the incident involves significant interest, I think the recent dispute between Mr Ricky WONG and ATV on the theft of documents and the attacks between each other, as well as many other issues, may also warrant investigation. In fact, the power of inquiry is a public tool, and the point is whether we have the evidence to do so and whether we should do so. I think the answer is obviously in the negative, for a case cannot be established hastily. The Legislative Council should be very cautious in exercising its judicial power of investigation.

The recent incident of Chinachem is a case in point. Has there been abuse of power and embezzlement of the Chinachem foundation? Has there been dereliction of duties? President, the incident involves significant public interest in a far greater extent than the case in question. However, does this mean that we should invoke the P&P Ordinance immediately to investigate the Chinachem foundation? Should we investigate whether there is dereliction of duties on the part of any trustee? It may be possible in the future, but for the time being, there is definitely no *prima facie* case.

President, many people have raised the concern for the suppression of expression of opinions. I would like to raise one point. Had the shareholders withdrawn their investment truly because of the host LI Wai-ling, or had the LOCPG had to make such an effort to suppress her, she would have been very outstanding, for she is still speaking on Commercial Radio. Had the authorities wanted to suppress her, it would have suppressed Commercial Radio first. In

reality, I have talked to the boss of Commercial Radio. To my understanding, he does not support in any way the Government's intervention in the DBC incident. The reason is straightforward: do not do to others what you would not have them do to you.

President, you may ask me whether the incident involves any political factors, or is this purely a commercial decision or dispute. Many colleagues said that it is impossible for it does not make any sense in the commercial context. I totally agree with this point. President, it is definitely not purely a commercial incident. However, Members should be clear about one point, that is, commercial consideration does not equal to commercial Sorry, I mean to say political consideration does not equal to political interference. No one will act without giving consideration to political factors, particularly businessmen doing big business, and particularly those engaging in businesses with the Mainland. A host of factors, including politics, business, law and personal ties, have to be considered. President, what are political factors? For instance, during the capital raising of a radio station, some people might have injected capital to assist certain political power or on the thought that with the assistance of a certain Chief Executive, the radio station would easily obtain the licence — whether or not it involved power abuse for personal gain or the obtaining of any privilege. They thought they would make great profit from the business, and that they would continue to make great profit after the successor assumed office. However, the dynastic change has prompted them to think that they are now in an unfavourable position and there is no way out if they continue with the business. It is definitely possible that they have such political considerations. Indeed, it is possible that this is the true cause of the present incident. Hence, we should not be so naïve in assessing the incident, by stating that it involves commercial consideration or political consideration, for all affairs are interrelated in a complicated manner, President.

The only mistake is that Mr Albert CHENG had made friend with the wrong persons in the beginning — or that he had made friend with the right persons in the beginning but it turned out that they were the wrong persons in the end. Mr Albert CHENG knows each shareholder well. He knows them full well, everything is known. He knows who they are, and he knows their background, political preference and their future choices. He knows all these clearly. It is an open transaction. The persons injecting capital in the company

knew that Mr Albert CHENG could have audience up high, for he might act as the "spy of Bow tie TSANG" and the agent contacting "Bow tie" direct.

President, if a select committee is to be established to inquire whether or not the approval of the licence involved any suspected irregularities back then, I may indeed vote for the proposal. However, for an inquiry into the present issue, I consider the evidence inadequate. Of course, I am just saying that there is such a possibility. For in reality, as I said earlier, I would only agree to adopting this approach if ample evidence, or a *prima facie case* at least, is established. Yet, as I said earlier, if political factors are involved in the obtaining of the licence, where the shareholders concerned having considered the change in the political landscape did not want to invest in the business any longer Sometimes, the "benefits" involved might not be palpable on the surface. Due to other political factors, the investment might be related to the maintenance of a relationship or might bring other "benefits". So it is absolutely possible that the shareholders do not want to invest in the company anymore when the landscape has changed. Members should not be so naïve as to think that no commercial element is involved as the LOCPG is not an advertising client and the news division is not concerned about business — they probably have some fantasies and extremely naïve ideas about the business world.

Ms Claudia MO talked about placing the wrong bet earlier, and Mr Alan LEONG indirectly mentioned the background of the shareholders. I was eager to hear from them what would be the consequence of a bet wrongly placed. Regrettably, they both stopped stop of saying it. Is placing the wrong bet the genuine cause of this incident? I believe the genuine cause for the incident is the wrong bet placed. Instead of saying the incident involved political interference, I would say that the decision was made out of political consideration. Since the wrong bet had been placed, the persons concerned wanted to change their mind now. They think they should not stay with the bet for they have suffered a substantial loss and they would rather write off the investment. That is business, straightforward as that.

President, I have been a solicitor and a lawyer for many years. I have come across numerous cases and seen numerous cases making no commercial sense, where lawsuits initiated and decisions made had not been supported by ample commercial considerations and factors. The incident this time may be one of such cases. When the persons concerned consider that they will not get

any benefit on the political and commercial fronts in future on the whole, they would rather back out. It is just that simple. For other shareholders who want to claim accountability for the wrong bet they have placed or the wrong persons they have befriended, I am afraid they have to find the solution themselves. He is indeed doing so now by seeking relief from the Court. I understand that Mr Albert CHENG applied for relief from the Court yesterday. He has requested the invoking of section 168A of the Company Ordinance in support of his application for the Court's assistance on the grounds of minority shareholders being suppressed, and he hopes to strive for the relevant interest. He is pursuing this now.

The Legislative Council definitely should not use any more public money and tremendous effort to deploy the "Imperial Sword" or the so-called "Imperial Shield" to help the person concerned to strive for his legal rights, which should not be striven for via the Legislative Council. As for the injunction order, the Court has ample justification to issue the order, including the fact that the tape recording was made under circumstance where no recording should be made, and that the disclosure was made when disclosure was disallowed. The Court would not issue an injunction order without a valid reason. The Legislative Council should not ignore the legal decision made by the Court by providing a "Protect-all cover" or the "Imperial Shield" to enable the person concerned to contempt the ruling of the Court by exposing the incident. For in fact, such practice will involve substantial public interest.

President, I state openly and frankly that I will give total support to the granting of more licences. Honestly, I am a fan of DBC. I often tune in to its broadcast, including the radio station of Mr Albert CHENG and his commentary, which I listen every morning. I also support applications like the application submitted by Ricky WONG of CTI. I support these applications. However, it does not mean that when something happens, we should immediately "press the button" to say that it involves interference of the Western District and we should invoke the P&P Ordinance. This formula has been applied time and again in the Legislative Council, causing repeated disturbances to the public. Some thin smoke will be exaggerated as a big fire, hoping it will set the forest on fire.

President, if we want to oppose interference, protest and defend against interference, we should find substantial evidence and establish a valid case, and

then deal with it seriously. Stop using these "crying wolf" stories every time, for it will only disturb the public. Many listeners, like me, like the broadcast of DBC, for the quality is very good and many programme hosts are outstanding. However, it does not mean that the closure of the radio station must be investigated by invoking the P&P Ordinance, for the conflicts of interests involved are labyrinthine.

President, some Members mentioned the "revenge proposition". I believe if it is really for the purpose of revenge, Mr WONG Yuk-man has raised the concern today by stating that favours and grievances are both involved. In fact, who is said to be taking revenge on whom? This probably involves all kinds of favours, hatred and grievances, which we can hardly pass a fair judgment. However, on the whole, President, it is absolutely inappropriate to take advantage of the procedure of this Council to take personal revenge, to recover debt or to gain any kind of political capital. When the prerequisite is not met, we definitely should not press that button. I have to reiterate here that the P&P Ordinance should not be invoked arbitrarily, for this Council does not have substantial *prima facie* evidence supporting this motion.

Thank you, President.

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

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Thank you, President. I also wish to thank Members for expressing their views on this subject. As I pointed out at the beginning of this motion debate, we consider it inappropriate for the Legislative Council to set up a select committee to inquire into the discontinuation of service by Digital Broadcasting Corporation Hong Kong Limited (DBC) and related issues.

A dispute had arisen among the shareholders of DBC over the injection of capital, leading to a lack of working capital. Subsequently, DBC ceased its broadcasting service at the end of October. The Communications Authority

(CA), as an independent statutory regulatory body, has all along been playing its role strictly in accordance with licence conditions and the provisions in law.

As I mentioned in my opening speech, the CA reached a decision earlier that DBC's suspension of broadcasting service between 10 October and 15 October amounted to a breach of licence conditions and a financial penalty of \$80,000 should be imposed on it. This is the heaviest financial penalty that has ever been imposed on licensees in accordance with the Broadcasting (Miscellaneous Provisions) Ordinance. Moreover, DBC submitted to the CA earlier an application for its broadcasting service to deviate from the programming requirements set out in its licence from 11.30 pm on 21 October this year, for a period of up to 60 days. Unless the CA's approval is obtained, DBC is required under its licence to broadcast every day seven 24-hour sound broadcasting service channels of specified genres, announcements in the public interest and a specified number of hours of non-Cantonese programmes. DBC is also required to provide a specified number of hours of first-run and repeated programmes in accordance with the proposal in the licence application submitted by it. However, from 11.30 pm on 21 October to midnight on 31 October this year, DBC broadcast only music and re-runs, and from midnight on 31 October, DBC even ceased its service altogether.

Having examined DBC's application carefully, the CA came to the view that frequency spectrum was a scarce and valuable community resource and there was public expectation that a broadcasting licensee should make proper use of the spectrum assigned to it in the best interest of the whole community and provide an adequate and comprehensive service which was responsive to the diverse needs of the community. Having regard to the impact on the listening public that would be brought about by DBC's deviation from the programming requirements as pledged in its licence, as well as DBC's failure to demonstrate commitment to resolve the financial predicament and fully resume its service within the proposed time frame, the CA decided to reject DBC's application. Given that DBC's deviation from these programming requirements during the relevant period amounted to a breach of licence condition of a serious nature, the CA considered that a sanction commensurate with the severity, nature and duration of the breach should be imposed on DBC in accordance with the law. The CA is inviting representations from DBC on the above provisional decision. An announcement will be made once the CA has reached a final decision on the matter, having taken into account the representations of DBC.

As this incident is being handled by the CA, we see no need to otherwise follow up matters that can be handled under the existing regulatory framework or legislation. Such an arrangement, no matter in terms of utilization of resources or efficiency of investigation, is most undesirable. The CA will, as its usual practice, investigate the incident in an impartial manner. However, if the Legislative Council conducts an investigation in parallel, the CA's work will definitely be affected. And inevitably, the public will cast doubts on the independence and impartiality of the CA in handling the incident.

The discontinuation of broadcasting service by DBC is attributed to the dispute arisen among its shareholders over the injection of capital. DBC, being a licensee, is of course subject to the regulation of licence conditions and the relevant legislation. But after all, it is a private company. Same as other private companies, in face of disputes among shareholders, no matter they have arisen from management approaches or financial problems, DBC should endeavour to resolve them through professional mediation or even legal proceedings, rather than requesting the Government to intervene or interfere. At the two special meetings of the Panel on Information Technology and Broadcasting of the Legislative Council held on 26 October and 24 November respectively, I already explained to Members and the public that it was inappropriate for the Government to play the role of professional mediator. By the same token, I consider it inappropriate for the Legislative Council to do so. In Hong Kong, apart from a well-established legal system, an appropriate mechanism of professional mediation is also in place. Should shareholders of a company have disputes over capital injection or assignment of their share rights, they can resolve them properly through legal proceedings or commercial mediation. This also exactly manifests how we uphold the spirit of the rule of law. As I mentioned in my opening speech in this motion debate, the shareholders of DBC are trying to resolve their dispute by legal means. As such, neither the Government nor the Legislative Council should make any interference.

President, a Member mentioned again the soundtrack that had been uploaded onto the YouTube sometime ago. I would like to make a clarification once again in this regard. At the request of Mr Albert CHENG, I met with Mr Morris HO, the Chief Executive Officer of DBC, with him on 26 September, during which Mr CHENG told me the situation of the company, including the dispute among its shareholders. He also played me a soundtrack at the meeting, which was an extract of the version uploaded onto the YouTube subsequently. But before it was played at that meeting, the mass media had made public its

content. There was nothing new at all. As advised by Mr CHENG, the audio-recorded meeting was held about one and a half years ago. Earlier on, Ms Cyd HO asked me why I knew it happened one and a half years ago. In fact, it was what Mr Albert CHENG told me at the meeting. The soundtrack seemed to be an extract of a conversation, involving one's citation of others' opinions. As I mentioned at the previous meetings of the panel of the Legislative Council, I could not verify the authenticity of such information, nor did I know the situation under which the conversation was made. Being a third party, I am not in a position to make any comments, especially someone's citation of others' opinions in the soundtrack concerning the employment of a programme host of another media organization. I am aware that the host is still in charge of the programme, expressing views freely. At the meeting, I reiterated the established stance of the Government to Mr CHEUNG and advised that it was inappropriate for it to intervene in the dispute among shareholders of a private company.

President, most importantly, irrespective of the existence of the opinions so cited and the stance of the person being quoted, shareholders/staff members of licensed broadcasters have the freedom and right to determine their personal stance. I reiterate that no matter we agree to the opinions or stance of a shareholder or not, it cannot be regarded as a justification for government intervention in the internal operation of a licensed broadcaster. Otherwise, it simply goes against our respect for the freedom of speech.

There are views that the problems encountered by DBC are attributed to political interference. I would like to take this opportunity to state the Government's stance again.

Hong Kong is a place with the freedom of speech. Every one of us has the right and freedom to express our views. Apart from individuals who enjoy the freedom of speech, licensed broadcasters or their shareholders also enjoy the same right and have the freedom in choosing their approaches and stances in editing and reporting, as well as employing talented people. As we can imagine, in such a free society as Hong Kong, even in the same company, different shareholders may have divergent views and take different stances regarding various matters. Should any dispute arise from different views and stances among shareholders, the best way to deal with them is, of course, to let shareholders settle their disagreement in a pragmatic manner. It is because even if there are different views and stances, we should foster harmony as far as possible. However, we should admit that not all disagreements among

shareholders can be resolved so easily. We can see some examples from time to time of disagreements among shareholders leading to disputes, which can only be resolved through legal proceedings at the end. One of the examples is the dispute among shareholders of Asia Television Limited (ATV) about two years ago. The lawsuit relating to its shareholders' disagreement is still being handled by the Court. As such, I am not in a position to make further comments here. However, I wish to emphasize that the Government did not intervene in the dispute among ATV shareholders either.

The dispute among DBC shareholders arising from their different views and stances had led to operational problems as both sides could not settle it immediately. Its nature is no different from that of disputes among shareholders of other companies. At the outset, these shareholders were willing to come together and make joint investment. This was their own choice. In the coming days, whether there will be smooth co-operation is also up to them. It is inappropriate for the Government to intervene. Mr Ronny TONG has cited in his speech my quotation of his remarks at several meetings. I would like to reiterate here that what I quoted is the public address made by Mr Ronny TONG on 21 October. This is what he said on that day (I quote to this effect): "After all, I am a barrister and I have to state clearly what the current situation is. This is a commercial dispute. The Government should not intervene in this commercial dispute."(End of quote) Of course, Mr Ronny TONG did make comments on some other matters on that day as well. If Members are interested, they can review them on the Internet.

In the DBC incident, I have heard of some requests for the Government and the CA to look into the failure of DBC shareholders to make investment as pledged in its licence. In this connection, I would like to give an account on our regulatory mechanism.

According to the conditions stipulated in the sound broadcasting licence, licensed broadcasters should implement investment plans approved by the CA. In case any amendments to these plans are required, they should apply for exemption from the CA. Therefore, if any licensed broadcasters fail to honour their commitment to the future investment, they should give the CA a reasonable explanation. If any licensed broadcasters contravene the requirements stipulated in their licences, the CA may impose a range of sanctions, including warning, financial penalty and suspension of licence, on them. We should note that the legislation and licence conditions will only empower the CA to regulate those

licensed broadcasters, so as to ensure, *inter alia*, that they will honour their commitment to investment. However, commitments or agreements made among shareholders of licensed broadcasters are not subject to the regulation of the legislation and licence conditions. Therefore, for operational problems of licensed broadcasters arising from disputes among their shareholders, the CA or the Government can only impose sanctions on licensed broadcasters rather than individual shareholders ultimately.

From the regulatory perspective, what we attach importance to is the commitments to investment made by licensed broadcasters. As for the respective shares held by each shareholder in the investment, it is simply an agreement among shareholders, which is outside the regulatory scope of the licence conditions. We understand that some Members and members of the public do not wish to see the discontinuation of service by DBC. However, DBC is a private company. There will not be any provisions in the legislation and licence conditions to force the company or its shareholders to make investment persistently or prevent the closure of the company.

In the entire incident, I notice that some people have requested intervention by the Government. I have listened very carefully to their views in this regard. For instance, I am aware of the following points:

First of all, there was a news article in August, alleging that I, being a Bureau Director, had refused to intervene in the incident or even turned a blind eye to it. However, no detail was given on what I should intervene in.

Second, there was another news article in October, alleging that the Government had no reason to stay out of the incident and did not intervene in it. But once again, no detail was given to state clearly what the Government should intervene in.

Third, at the special meeting of the Panel on Information Technology and Broadcasting held on 26 October, Mr Albert CHENG said (I quote to this effect): "I do not request the Government's intervention I hope that he can" — President, I believe he was referring to me, being a Bureau Director — "..... invite shareholders from both sides — those with disputes — to sit together and have a meeting" (End of quote). To me, although Mr Albert CHENG did not admit, the intervention requested by him was in fact asking the Government to mediate the dispute among the shareholders. As I mentioned just now, apart

from a well-established legal system, an appropriate mechanism of commercial mediation is also in place in Hong Kong. If the request is about arranging for a meeting to mediate disputes among shareholders, I believe that those commercial mediation service providers will be more capable than the Government in providing such professional services.

President, let me cite another example. Some members of "爭取DBC復播運動行動委員會", a committee that strives for resumption of broadcasting service by DBC, published an article in newspapers in October, saying that irrespective of the reasons behind the sudden discontinuation of broadcasting service by DBC arising from the dispute among its shareholders, it was necessary for the Government to intervene immediately for an in-depth investigation and find out who should be held responsible for it. No matter what, it should not just sit aside and turn a blind eye to it. In this regard, I have explained that the Government has all along been playing its regulatory role in accordance with licence conditions and the relevant legislation and procedures, handling DBC's breach of licence requirements conscientiously. In case the opinions and stances of a certain DBC shareholder are different from those of others, and the authorities can then investigate the shareholder or those holding the opinions/stances concerned, this is really a misunderstanding about the spirit of the regulatory framework and the legislation. If the regulatory authority can arbitrarily intervene in and investigate the internal operation of the organization due to the opinions/stances of shareholders of a certain broadcaster, I am afraid the independence and autonomy of broadcasters will vanish completely.

The Government has all along respected the independence of licensed broadcasters, and therefore it will not intervene in their internal operation. The Radio Code of Practice on Programme Standards formulated by the CA also focuses on programme standards. It is also stipulated in the Code that the CA will not pre-censor any programmes. The editorial responsibility lies with the licensed broadcasters. They should ensure that any programmes delivered by them will comply with the Code. Given that licensed broadcasters are engaged in the work relating to mass media, their shareholders may hear criticisms and praises from various quarters every day. No matter they agree to these views or not, it is necessary for them to determine their own stances. I call upon Members to think deeply whether the Government or the Legislative Council has to intervene once the shareholders of a licensed broadcaster hear some criticisms. If it is considered proper to do so, I am afraid the Government and the Legislative Council will have to intervene in the internal operation of a licensed broadcaster

today simply due to certain views and stances. In future, is it the case that we can intervene in the internal operation of another licensed broadcaster due to some other views and stances as well? In such a pluralistic society like Hong Kong, it will go on without end. And more importantly, such intervention will definitely impair the editorial autonomy of licensed broadcasters in Hong Kong, will it not?

I hear that Members have expressed different views on the motion just now. I also wish to respond to certain points. First of all, Ms Emily LAU, Mr SIN Chung-kai and some other Members mentioned that the Government had intervened in the dispute among ATV shareholders, but it had not done so in this incident. According to my information, the Government had not intervened in the dispute among ATV shareholders arising from their disagreement in 2010. As shown in the information, same as the DBC incident, we had maintained close liaison with the licensed broadcaster in the dispute among ATV shareholders, so as to understand the development of the incident. Meanwhile, same as the DBC incident, the Government had liaised with the senior management of ATV, rather than liaising with individual shareholders direct. The ways of handling these two incidents are broadly the same.

Moreover, as shown in our records, the then Secretary for Commerce and Economic Development only told the media that the Government had a mechanism to monitor the operation and financial situation of ATV; it kept a close eye on the development of its change of shares, hoping that the Board of Directors of ATV would continue to manage its television programmes properly; and the management of ATV had stated openly that it was responsible for maintaining that services of its television station would not be affected. As a matter of fact, regarding the dispute among ATV shareholders arisen around March in the first half of 2010, the legal proceedings are still in progress. During this period of time, the Government has not intervened at all, and it is also inappropriate for it to do so.

The dispute among ATV shareholders had once led to shortage of capital. Did the Government intervene at that time? As shown in our information, the Government did not do so. Same as the DBC incident, we had maintained close liaison with the licensed broadcaster in respect of the capital shortage of ATV, so as to understand the development of the incident. The ways of handling the two incidents are broadly the same.

A number of Members have also mentioned, given that I had been involved in disputes relating to the broadcast rights of the London Olympic Games, why did I do not intervene this time around? As I explained to the relevant panel of the Legislative Council, the broadcast rights of the London Olympic Games involved communication problems among various broadcasters, rather than internal operation of individual media organizations. Therefore, we cannot lump them together.

Ms Emily LAU and Mr MA Fung-kiok are very much concerned about the development of digital sound broadcasting services. They also mentioned here that some companies had procured quite a number of digital radios. We do understand the impact that will be brought about by the operational problem of DBC on digital sound broadcasting services as a whole, in particular, the audience of the programmes of that company. We hope that the shareholders of DBC can resolve their dispute in a pragmatic manner. No matter what, Radio Television Hong Kong (RTHK) and the other two commercial broadcasters are providing digital sound broadcasting services according to their plan or licence requirements. In addition to eight programme channels which have been officially launched, they will continue to increase the number of programme channels to 11. Digital radios available in the market can also receive the programmes I have mentioned just now. President, we will continue to work collaboratively with RTHK and the companies concerned in the provision of quality digital sound broadcasting services for members of the public. In fact, digital sound broadcasting has just been introduced. We hope that the audience can allow time and room for our radio stations to develop this brand new service.

Mrs Regina IP asked just now how to handle the frequency spectrum released upon revocation of DBC's licence. I of course do not wish to see the closure of DBC. We will handle this incident very carefully, and will approach DBC to understand the development of the incident. As for the way of handling the frequency spectrum upon revocation of DBC's licence, I think it is too early to discuss it now.

Lastly, Mr CHAN Chi-chuen mentioned the investment pledged by DBC. I wish to make a further explanation here. The investment pledged by DBC upon obtaining its licence, that is, the investment on infrastructure and programmes amounting to \$391 million in the first six years, should be effective from the grant of licence. At the meeting of the Panel of on Information

Technology and Broadcasting held on 26 October, Mr Morris HO also mentioned that as of February this year, the investment made by DBC shareholders had in fact amounted to \$150 million, exceeding the expected amount of investment that should be made in the first year as originally planned.

President, since the dispute among shareholders of DBC, we have called on them as well as its interim receiver time and again that they should resolve the problem in a pragmatic manner. We have actually wasted a lot of time and efforts on this incident and now we should move on. I also trust that it is time we allowed the CA to continue to handle the DBC incident in accordance with licence conditions and the relevant legislation, and give an account to the public from time to time. We should also allow shareholders of the company to continue to deal with the problem through legal channels. We consider that the Legislative Council should not inquire into it separately. It is because in doing so, it will definitely affect the work of the regulatory body and cannot help resolve the incident at all. Worse still, it will set a very bad precedent of intervening in the internal affairs of broadcasting companies. Once such a precedent is set, it is not difficult for us to imagine that when disputes arise among shareholders of another broadcaster next time, irrespective of its background or stance, there will bound to be strong voices calling on the Government to intervene in the internal operation of that broadcaster. Ultimately, we will ruin the independence and autonomy of broadcasters we have cherished all along.

With these remarks, President, I implore Members to vote against Mr Albert CHAN's motion. Thank you, President.

PRESIDENT (in Cantonese): Mr Albert CHAN, you may now reply.

MR ALBERT CHAN (in Cantonese): President, I will describe the two speeches made by the Secretary just now and earlier as nothing more than some nonsense seeking to confuse the public.

President, the crux of the dispute lies in political interference but not the handling approach of commercial affairs or internal problems of a specific company. To date, at the meetings of the relevant panel of the Legislative Council, on various public occasions, radio stations and television stations, as

well as in the two speeches of the Secretary lasting for more than half an hour, the Secretary has never responded to, commented on or denied the intervention of the Liaison Office of the Central People's Government in Hong Kong SAR (LOCPG). It is most peculiar that the Secretary has not denied that. Since the Secretary has not denied that, it reveals that the allegation of intervention by the LOCPG is not entirely unfounded. The intervention or interference by the LOCPG, as well as the opinions it offered to certain directors, constitute political interference.

Let us review the opinion poll incident of the University of Hong Kong (HKU) involving Andrew LO. How was the HKU opinion poll incident broken out? At that time, Robert CHUNG pointed out to the media that someone had exerted pressure on him regarding the opinion polls on the then incumbent Chief Executive and the Government conducted by him. The HKU established an independent Investigation Panel to summon Andrew LO, the incumbent Vice-Chancellor of HKU and the relevant persons to give testimony. Finally, it was proved that political interference was involved, and Andrew LO was ruled as a poor and untruthful witness. It is evident that we will not know who should be held accountable if no investigation is carried out.

The findings of any inquiry by the select committee may be that Albert CHENG is a poor and untruthful witness. How do Members know that the tape recording about WONG Cho-bau is the whole truth? Perhaps he has only repeated part of the views of someone from the LOCPG, and he may have more views explaining why he does not like LI Wai-ling? Perhaps he considers that LI Wai-ling is a poor public affairs commentator, for her articulation is unclear, her logical analytical power is weak, her grasp of political theory is superficial and her understanding of matters is poor.

WONG Cho-bau may give a series of reasons explaining why he does not want to spend several million to employ a poor public affairs commentator like her. WONG Cho-bau may provide many good reasons for not recruiting this person to join the radio station. However, we cannot get the whole truth. If that is the case, the tape recording provided by Albert CHENG may have done injustice to WONG Cho-bau and the LOCPG.

When we look back, we can find numerous examples, and the HKU opinion poll incident is a case in point. After the HKU opinion poll incident was

disclosed, the information revealed was much less in comparison with the information revealed by Albert CHENG of Digital Broadcasting Corporation Hong Kong Limited (DBC) in the present case. Definitely, more information has been disclosed in the DBC incident than in the Robert CHUNG incident back then. Perhaps there are too many parrots here! Andrew LO is a well-known parrot.

I am greatly surprised at the logic of the Secretary. This Council has spent such a long time to discuss the issue, yet the Secretary kept repeating that the incident is only a commercial issue. Everyone can clearly differentiate a "commercial issue" from "public affairs".

DBC became an organization bearing public responsibility once it obtained the licence. Since it has the power to control the airwaves, the incident involves public interest. When public interest and private investment are interrelated, public interest overrides private interest and privacy. However, regarding concerns about the airwaves, the impact on public right, as well as the impact on the right to broadcast and the concern that it is nipped in the bud, the Secretary has not responded at all. Back then, when Andrew LO imposed restraint on Robert CHUNG and disallowed him to continue with the opinion poll, the purpose was to wipe it out.

The LOCPG disallows WONG Cho-bau to invest for it intends to wipe out DBC at its initial stage of development of the broadcasting service. Since the incident also carries political implications and involves public interest, how can the Secretary play the "super human tape-recorder" by merely repeating the poor explanation and analyses without addressing the concerns about the airwaves, public interest and public rights? The Secretary has not responded to any of these issues at all. In what way is he capable of being the Secretary?

President, at seeing this kind of Director of Bureau before us, I think Hong Kong people should forsake the idea that their rights will be protected by the Government. The responses given by the Secretary on various occasions share the essence of the responses given by LEUNG Chun-yin in evading the problem of unauthorized structures. The mentality, handling approach and value preference underlying these responses are basically the same. These responses are trying to evade, procrastinate and play down the issue by all means, leaving the crux of the problem unaddressed. They continue to present what they want

to present, which are just wishful thinking of theirs, yet turning a blind eye to the fact that 70 000 people had taken to the streets. In response to the call from "Tai Pan" for resuming the broadcasting service, 70 000 people had come forward to surround the Government Secretariat.

In respect of the opinion poll, when we said that the public have praised DBC on Facebook, the Secretary boasted how people support RTHK. For a Director of Bureau of this quality, the public should hardly expect him to make any achievement in public broadcasting service. Among the several Directors of Bureaux responsible for broadcasting services, Gregory SO can be regarded as the poorest, the most incapable and the most idiotic Director of Bureau over the past years in the Hong Kong — since the introduction of direct elections to the Legislative Council, that is, since 1991. As such, I believe the public desiring to strive for the rights to the airwaves will have to do so through their voice and their feet.

President, I would like to respond to the questions raised by a number of Members. A total of 22 Members have spoken earlier, of which 16 Members are from the democratic camp and six others from the pro-government camp. The 16 Members from the democratic camp have in general stated in their speeches the importance of safeguarding the freedom of expression and public broadcasting, and they consider the setting up of the select committee necessary. Members from the pro-government camp basically consider that there is not such a need, for the incident only involves commercial affairs or that evidence is insufficient. In my view, the remarks by Mr MA Fung-kwok and Mr Paul TSE are relatively fair and objective, though I do not fully agree with them.

As for the last part of the speech of Mr Paul TSE, the part on revenge, I do not know what he means. His speech was nonsensical. He was trying to besmirch Mr WONG Yuk-man and me of taking revenge. We do not have any hatred and aversion. On the contrary, Yuk-man and I are indeed returning good for evil. In fact, the LOCPG and Albert CHENG have done favours to Mr Paul TSE. Mr Paul TSE was elected because Albert CHENG had invited "Fat LAI" as a guest host a few days before the closure of DBC, where "Fat LAI" boasted the Democratic Party and sullied the People Power, giving an edge to Mr Paul TSE in winning "The King". Otherwise, "The King" would have got another 2 000 votes.

Had Albert CHENG not invited "Fat LAI" but Yuk-man and me as guest hosts, "The King" of the People Power might have got 2 000 more votes and defeated Mr Paul TSE. Therefore, DBC has done a favour to Mr Paul TSE, who is now returning good for evil! Nonetheless, the favour bestowed by the LOCPG might be even greater. So in order to return favour, he definitely has to oppose the motion today. Since the motion today is openly targeted at the LOCPG, Mr Paul TSE will surely oppose the motion as a gesture of returning favour.

President, the HKU opinion poll incident involving Andrew LO and Robert CHUNG, which I mentioned earlier, and the DBC incident are comparable to the two sides of a coin. The circumstances of the two incidents were largely similar.

In respect of public interest, the impact of the DBC incident on public interest is definitely greater than that in the HKU opinion poll incident back then. At that time, Members had raised numerous reasons, including academic autonomy and academic freedom, to oppose the setting up of a select committee to inquire into the HKU opinion poll incident, and Members stated that the Legislative Council should not exert influence on academic institutions. The reasons raised by Members at the time are holier than the so-called "commercial justifications" put forth by the "nonsense" Secretary now in the Chamber. I would say that those reasons are much more valid, are they not? Back then, Members opposing the proposal stated righteously that the HKU was monitored by the Vice-Chancellor, the Chancellor and independent organizations, so it was unnecessary for the Legislative Council to interfere with the academic freedom of the HKU. This reason is more valid, is it not?

On the contrary, when we look at the so-called "concerns" about public interest expressed in this Chamber, we notice that some people simply ignore the holy responsibility of this Council and public interest due to their political positions and bias in favour of the Government. These practices should be condemned. The people of Hong Kong can see clearly the inadequacies of this Council.

During the British era in Hong Kong, an independent investigation panel was set up to investigate the HKU opinion poll incident, which eventually do justice to Robert CHUNG. The truth was that a man called Andrew LO from the Office of the Chief Executive had intervened in the internal affairs of the

HKU in an unreasonable and improper manner. However, in the DBC incident before our eyes, where intervention by the LOCPG is suspected, why do Members in this Chamber have to oppose the setting up of a select committee to investigate the case? Has the LOCPG got a skeleton in the closet? Or are that these Members certain about the LOCPG's intervention and they are unwilling to reveal the truth to the public? Perhaps they consider the intervention by the LOCPG is more than natural and an investigation is thus unwarranted. After all, the LOCPG has intervened in elections, all political affairs and the rescue work of the Lamma Island ferry disaster. The LOCPG has intervened in every issue, has it not? The LOCPG has intervened in all district affairs under the District Councils, let alone that of the Legislative Council.

As for the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), they have grown used to all this. From their point of view, intervention by the LOCPG is part of the reality and part of the life of the people of Hong Kong. The LOCPG's intervention in Hong Kong affairs, political affairs and decisions of the Board of Directors, particularly decisions involving public affairs, has become an acceptable reality.

I believe the LOCPG must have approached the HKU to persuade Robert CHUNG to cease conducting the relevant opinion polls back then. Some time ago, an academic from The Chinese University of Hong Kong said that some so-called "special persons" would meet with them and instruct them what issues they should and should not study. The academic circle in Hong Kong has been penetrated and directly intervened by mainlanders of special capacities, who may not necessarily be pseudo-officials from the LOCPG but advisers or persons-in-charge of research organizations. Those mainlanders of special capacities are indeed influencing major academic institutions and societies in Hong Kong, or even manipulating the triad societies in particular.

During the election — Yuk-man is most familiar with this — the director of a department of the LOCPG, who has close contact with the head of triads in the district, had instructed them on their voting preference. Certain Members of this Council secured the support from three groups, namely, the triad society, churches and trade unions, and they were successfully re-elected as a result. There are copious examples of this kind. However, we are reluctant and unwilling to let Hong Kong be reduced to a society completely controlled by the communists in Hong Kong, and we will not allow the communists in Hong Kong

to ignore the principles of "one country, two systems" and "high degree of autonomy" for Hong Kong people highly recommended by DENG Xiaoping, thus manipulating the Legislative Council.

As long as I can stand in this Chamber, I will say "no" to the communist power in Hong Kong. I will neither allow them to take control of our political decisions, nor let them take control of our airwaves. The communist party knows full well the importance of the airwaves and definitely the importance of propaganda. The rise of the communist party and its capability to maintain the stability of its regime hinges fully on propaganda and the control of the broadcasting services, so that the thoughts of the people are subject to control.

We must safeguard a core value of the people of Hong Kong — freedom. I am extremely displeased with DBC personally. However, as the saying of Voltaire goes, "I do not agree with what you say, but I will defend to the death for your right to say it". By the same spirit, I will safeguard the freedom of expression and the freedom of broadcast in Hong Kong. Therefore, for the future of Hong Kong, I hope Members will support the motion.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Albert CHAN

(Someone in the public gallery raised a hubbub)

PRESIDENT (in Cantonese): Will the person in the public gallery stop it.

(The person in the public gallery did not stop the hubbub)

PRESIDENT (in Cantonese): If the person in the public gallery does not stop, I will have to ask him to leave immediately.

(The person in the public gallery stopped)

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

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for 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 stop now and the result will be displayed.

Functional Constituencies:

Mr James TO, Mr Frederick FUNG, Dr Joseph LEE, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK and Mr IP Kin-yuen voted for the motion.

Dr LAU Wong-fat, Mr Tommy CHEUNG, Mr Vincent FANG, 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

Frankie YICK, 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, Mr CHUNG Kwok-pan and Mr Tony TSE voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, 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, Mrs Regina IP, Mr Paul TSE, Mr Michael TIEN, Mr James TIEN, Mr CHAN Han-pan, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT, 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, 32 were present, eight were in favour of the motion and 24 against it; while among the Members returned by geographical constituencies through direct elections, 34 were present, 17 were in favour of the motion and 16 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): The second and the third 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.

Second Member's motion: Executive Council as gate-keeper for MTR fares.

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

I now call upon Mr Michael TIEN to speak and move the motion.

EXECUTIVE COUNCIL AS GATE-KEEPER FOR MTR FARES

MR MICHAEL TIEN (in Cantonese): I move that the motion as printed on the Agenda be passed. This motion on "Executive Council as gate-keeper for MTR fares" which I propose today should be a big disappointment for the MTR Corporation Limited (MTRCL). This is because ever since the motion has come to light, the MTRCL has been intimating that discussions can be held on revision of the formula. It is, however, precisely because of this that I think the more the MTRCL dislikes the idea of the Executive Council acting as the gate-keeper, the more beneficial it is to the public.

In 2007, with the merger of the two railway corporations, the MTRCL was compelled to renounce its autonomy in fare determination and adopt the Fare Adjustment Mechanism (FAM), that is, a mechanism that allows fares to go upwards and downwards. The aim of this mechanism is to restrict the rate of fare increase and the MTRCL is required to revise the fares downwards during times of deflation. But apart from lowering the fares not long after the merger, the MTRCL has been increasing the fares for the past few years despite its making a substantial profit of close to \$10 billion each year. In 2011, the corporation even made a record-breaking amount of profits of \$14.7 billion. But it still forced its way through and had a fare hike of 5.4%. Members of the public broke into an angry tirade against the corporation. They questioned why the corporation had to raise its fares despite the hefty profits earned. The grassroots were particularly hard hit and they felt that they were heavily burdened. Society was engulfed in a sea of discontent.

The adoption of a mechanism that allows fares to go upwards and downwards is only a numbers game, a game meant to be played by the MTRCL and the Government. Speaking in terms of doing business, the MTRCL is an expert in the numbers game. It has got a great number of professionals doing this trick in numbers. They are better than the Government and Members of this Council. Even if the MTRCL makes a lot of money and it is so fat as it cannot pull up its socks, so to speak, it can still tamper with the numbers to its advantage. The reason for that is simple enough. Let me share with Members my experience as the former chairman of the Kowloon-Canton Railway Corporation (KCRC). Over the years the railway corporation has in its hands a lot of data from all areas and such data are unknown to the public. We are simply not in a position to play the numbers game with the MTRCL. I can say that no matter what components are found in the formula, provided that a revision is made to it, there will be another revision five years later if it is unhappy about it. And the process just goes on and on.

It is really a big contradiction to ask a commercial corporation to take into account people's livelihood when it considers increasing its prices. The independent directors of the MTRCL must consider the greatest profits for the corporation and they must speak out for the small shareholders in opposition to the stand of the Government which is the major shareholder, forcing the MTRCL to maximize its profits. For if not, the case can be brought to court. However, on the other hand, the Government as the major shareholder has to show that it cares for the livelihood of the people and so it wants to add this and that to the formula and to make revisions. It may ask the MTRCL to put profits as the secondary consideration. But I am sure that the Government is no match for the MTRCL when it comes to counting the beans. And so ultimately the Government will be led by the MTRCL.

Speaking from the perspective of the MTRCL, it has all along thought that in the existing formula, the inflation index has taken into account public affordability. This is what someone from the senior management of the MTRCL has told me personally. The income from properties is meant to subsidize the fares and to maintain the level of service. This can well be said to be a great favour bestowed by the corporation. In other words, if the amount of subsidy from property income is not that substantial, the fare for a cross-harbour trip will definitely not be some \$10 but it could be as much as \$50 to \$60. Moreover, they also say that the money made from fare increases will be paid back to the public, such as in the form of concessions like the "Ride 10 Get 1

Free" scheme and the "10% Discount for Every Same-day Second Trip", and so on. But these are just gimmicks that do not have any practical value. I would think that instead of offering these concessions, it would be much better if the level of fare increase can be reduced.

It appears that the "Ride 10 and Get 1 Free" concession would be the best. But passengers are required to take 10 trips in a week and they have to line up for the specific purpose of redeeming a concessionary ticket. Any person who works from Monday to Friday is immediately disqualified if he takes one trip less. The most cunning thing about the scheme is that you have to take 10 trips before you are given a ticket for one trip. If someone uses a concessionary ticket for one trip, he may not be able to amass a total of 10 trips in a week and hence not be eligible for the concession. There are even more people who do not know that the free ticket obtained after much effort made is only valid for one month. But as no information on that is printed on the ticket, those who are unaware of the restriction may have missed the chance of using it. Having said that, we know that companies are experts in making calculations and we cannot blame them.

I have attended two public hearings and heard views from many people, saying that the formula in the mechanism must be changed and all kinds of indicators should be attached to it. But after considering these views, we think that there are three major problems that must be overcome before we can hope to foster a consensus between society and the MTRCL. First, what should be the components to be included in the formula? Although there is some common understanding in society, how should this be defined? In the case of public affordability, for example, the MTRCL is of the view that the inflation part in the formula has already taken into account public affordability. But when I asked opponents of the idea, most of them could not say for sure what they thought to be the level of fares affordable to the public.

So I asked the men in the street in the districts. Many people say that at first impression, affordability should be the difference between the rise in median wage and the rise in inflation. If in one particular year, the number is positive, this implies that affordability is sufficient and some points can be added and there can be a fare increase. The idea is that the MTRCL can be allowed to increase its fares by even more than the 5.4% as approved now. If the figure is in the negative, that means the rate of increase in inflation is greater than the rise in the

median wage. So some points should be deducted and the percentage should be reduced to less than 5.4%. But the worst thing is, as I have checked the figures, I found that for the year 2011, the increase in median wage over the previous year of 2010 is greater than the inflation rate by 3%. In other words, if the FAM includes a factor of public affordability which is worked out from the difference between median wage and inflation, it is very likely that additional points should be given to the MTRCL and that means it can be allowed to increase its fares by a few percentage points more than the 5.4% permitted.

Second, how can the proposed components to be included in the formula be quantified? As an Honourable colleague has suggested in his amendment, incidents of train service delay of more than 20 minutes should be included in the formula for the purpose of deducting the fare increase. But may I know, are 10 incidents in a month lasting from 20 to 30 minutes more serious than five incidents of serious service disruption in a month lasting for five hours? When we are to make such calculations, are we going to use the total number of hours or the number of incidents? I believe all the 70 Members in attendance, including the President, may hold different views.

Third, when we determine the proportion taken by each component, is the proportion for each component equal? Should it be component A plus B minus C and D? Or if it should be 3A plus 2B minus 3C? Members of the public may think that components like service level and property proceeds should take up a greater proportion. But for the MTRCL, it will demand that the proportion be equal for all components. So it would be much harder to reach any consensus on that. After four months, the MTRCL may say that since there is no consensus, it will follow the existing formula and introduce a fare increase all the same. There is nothing we can do about it.

Besides, some Honourable colleagues think that setting up a fare stabilization fund can reduce the rate of fare increase. But both the Government and some scholars think that setting up such a fund falls under the practice of "dedicated funds for dedicated uses". The idea is funds for certain specified uses should be used for such purposes. However, when it comes to the question of using public money, the Government is very resistant to the idea of dedicated funds for dedicated uses and it insists that the principle of public finance must be that the money must first go to the Treasury and it is then open for bidding from

various bureaux. So how can the Government break this practice and set a precedent?

Also, some Honourable colleague suggests buying back the remaining some 20% of the shares of the MTRCL and make the corporation a public body. This is an extremely wrong idea like the proposal to buy back The Link. They say that we should buy back The Link and also the MTRCL. If this idea of a mega government is allowed to extend indefinitely, in theory, they can propose motions to urge the Government to buy back all the public utilities. Anyway, I can learn at least from their proposal what the concepts they have in mind.

But how much money do we need to make a buy-back? Once the MTRCL is bought back, it will become a public body. The public will expect the Government to never permit it to raise the fares and they may even demand a cut in fares. Then what about the repairs and maintenance, will we still have any confidence in it? As for procuring new trains, making the train service more frequent, all these are just out of the question. Also, do we have the confidence that the Government will run such public bodies better than the listed companies? If this is the case, there would have been no need to privatize in the first place. Back then the KCRC was always severely criticized for providing bad service while the MTR providing a good one. So this is the question before us. MARX once said that if history were to repeat itself, the first time it would lead to a tragedy and the second time it would result in a farce. Are we trying to put up a farce now?

When I was lobbying Members for their support of this motion, many of them asked why adjustment rates to be computed by the Executive Council must not exceed 30%. I base my proposal on the records of the fare hikes of the bus companies. As the bus companies do not have any objective mechanism for fare adjustment, they have always been asking for an incredible increase rate first before coming down to a more reasonable rate. In the years 2008 and 2011, the average rate of increase in fares applied for by the bus companies was about 9%. After vetting by the Executive Council, a counter-offer of a 4% increase was made. The average deduction in the process was 55%. But since the MTRCL has already got a formula to set the fare prices, and it includes changes in the wage index and consumer price index, so to a certain extent, the people's livelihood has been taken into account. When I propose that the adjustment rates to be computed by the Executive Council must not exceed 30%, I am of the

view that this can serve to protect public interest while pacifying the small shareholders though they may have to swallow it reluctantly.

I must emphasize that this proposal of a 30% restriction is meant to throw a sprat to catch a herring. Members may put forward their views on that. What is the significance of this adjustment rate of 30% to the MTRCL and the public? Take the example of the demand of the MTRCL to raise fares by 5.4% in 2011, if the Executive Council really cuts the rise by 30%, it means that the fare increase will be reduced to about 3.8%, that is, the MTRCL can only raise the fares by 3.8% and it will make \$180 million less in profit. But compared to its profits for the whole year, this amount is only 1.2% of the total. I do not believe that the small shareholders will dump the shares of the MTRCL because of that. This is a limited adjustment. It allows the small shareholders to have some concrete idea as to what they will get while also pre-empt some endless arguments.

We from the New People's Party will only speak the truth and do concrete work. For many years it has always been a political issue whenever the public utilities talk about a fare rise. This is never a purely commercial decision. We must not deceive ourselves because even though we have this FAM which is considered the best, the figures so computed will only result in opposition from the people whenever any proposal is made for a fare rise. People will never be happy when they hear a fare rise. In response to a question raised in this Council on whether the minimum wage could be adjusted according to inflation rates, Secretary for Labour and Welfare Matthew CHEUNG said that the minimum wage related to the interest of society as a whole and in such a process, political factors were involved. Hence there should not be any automatic adjustment according to a formula. The decision on the minimum wage was thus made after consultations in the Minimum Wage Commission. Given this, why should the Government favour one thing to the neglect of the other? When there are humanized consultations on the question of minimum wage, why should a mechanical formula be used in fare increases by the MTRCL?

I am glad that most of the amendments support subjecting the adjustment rates to vetting by the Executive Council. But I have great reservations about the idea that the fare adjustment rates should be vetted by the Legislative Council and the Executive Council. Under the Basic Law, Hong Kong is executive-led, so there would of course be no problems if the result of such vetting by the two

Councils is the same. But if this is not the case, then which Council should prevail? If the Legislative Council has the policymaking power, then will we become an executive assembly? As for those amendments which do not support the idea that the adjustment rates be vetted by the Executive Council, since they do not agree with my motion, it would be difficult for me to lend them my support. In the long run, I would think that when vetting applications for increases in fares and prices by the public utilities, we should adopt a mixed approach, that is, after going through some cold and mechanical computations, we should also put in some humanized adjustment by considering livelihood issues. And there must be some limit to this kind of adjustments before there is any hope to balance commercial interest on the one hand and livelihood considerations on the other. In this way, the hard and mechanical can blend with the soft and humanized.

Finally, I wish to reiterate that it is less than four months before the MTRCL will announce its fare adjustment rates for the coming year. If this motion is passed, we can exert pressure on the Government and let the Executive Council assume its gate-keeping role sooner. I implore all Members in the Chamber to support the motion. I so submit.

Mr Michael TIEN moved the following motion: (Translation)

"That the net profit of the MTR Corporation Limited ('MTRCL') in 2011 reached \$14,716 million, but as computed under the formula of the Fare Adjustment Mechanism ('FAM') (i.e. the mechanism that allows fares to go upwards and downwards), MTR fares may be increased by 5.4%, rendering the burden of rail transport expenses on grass-root people heavier; at present, the community generally considers the formula not comprehensive enough and that the Government should, during the present review of MTRCL's FAM, include in the formula components that can better reflect public affordability and profit level, rental income and service performance (including the level of performance in handling incidents), etc. of MTRCL; however, the re-establishment of a formula is bound to be protracted, time-consuming and fruitless because the various social sectors can hardly reach a consensus on the definitions, assessment methods and respective weightings of the aforesaid components; there is also a proposal in society of using the dividends distributed by MTRCL to set up a fare stabilization fund to offset the extent of fare increases, yet

both the Government and academics consider that this 'dedicated-funds-for-dedicated-uses' practice deviates from the Government's public finance principle; in this connection, this Council urges the Government, being the major shareholder of MTRCL, to:

- (a) maintain the existing formula of FAM, and submit the fare adjustment rates computed under the formula to the Executive Council for vetting, with the Executive Council having the power to make final adjustments, subject to the condition that the difference between such adjustment rates and the adjustment rates computed under the formula must not exceed 30%; such an arrangement enables the Executive Council to serve as the final gate-keeper on MTR fares and MTRCL and its shareholders to have a basis for projecting the profit of MTRCL;
- (b) require MTRCL to strictly implement the 'eight-minute notification system' to ensure that MTRCL can speedily notify the public in case of incidents, and the Executive Council should take account of MTRCL's performance in this regard when vetting MTRCL fare adjustment rates; and
- (c) require MTRCL to introduce reasonably-priced territory-wide monthly tickets to benefit all passengers, and utilize this as an incentive to promote working across districts, with a view to alleviating workers' financial burden."

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

PRESIDENT (in Cantonese): Nine Members wish to move amendments to this motion. The Council will now proceed to a joint debate on the motion and the nine amendments.

I will first call upon Dr KWOK Ka-ki to speak, to be followed by Mr LEE Cheuk-yan, Mr Frederick FUNG, Mr WU Chi-wai, Mr TANG Ka-piu, Mr

Frankie YICK, Mr CHAN Kam-lam, Mr Gary FAN and Mr Kenneth LEUNG respectively; but they may not move the amendments at this stage.

DR KWOK KA-KI (in Cantonese): President, when we see that a public utility made a profit of \$14.7 billion last year; \$12 billion the year before; \$9.6 billion in 2009; \$8.2 billion in 2008; \$15.1 billion in 2007, we should be very happy. But if this is a corporation which affects millions of citizens everyday and when it still wants to raise the fares by 5.4% after making a record-breaking and astronomical sum of profits, then we could not break into any smile.

First of all, I wish to thank Mr Michael TIEN for proposing this motion so that we can propose some amendments to it. I believe he is not doing this to absolve his sins. This is because, as we all know, when the two railway corporations merged back in those days, Mr Michael TIEN should have known more than any other Member the secrets behind it. The thrust of the amendment from the Civic Party lies in the idea of buying back all the remaining shares of the MTRCL. I will explain from three angles why we consider that there is such a need for it.

First, on fares. When the two railway corporations merged at that time a Fare Adjustment Mechanism (FAM) that allows fares to go upwards and downwards was proposed and that aroused extensive discussions in society. I have looked up the huge amount of reports at that time and the discussions conducted in the Legislative Council. I found that there is something we should reconsider. If Members would still remember it, at that time the MTRCL placed a full-page advertisement to publicize the FAM and said that the FAM was a well-justified proposal meant for the benefit of the public. However, as we know, the consumer price index and the wage index will only rise in the long run and they will never go down. And this mechanism is like an unbridled horse. Members who lent their support to this mechanism which is in our opinion deadly wrong should ponder over this mechanism which allows fares to go up or down. They should reflect on the reasons why they made such a wrong decision then, for this mechanism has changed into one that only increases the fares and can never lead to any drop in the fares.

The MTRCL has more than 40 property development projects and the income from these projects last year alone was close to \$4.4 billion. But the

money made has never been used to help the people. If the MTRCL is allowed to act recklessly according to this mechanism, I am sure this mechanism will never meet public aspirations. Now people who live in remote places like Tung Chung, Tin Shui Wai, Tuen Mun and Yuen Long have to pay some \$20 for each trip. But not only does the MTRCL not care about their hardship but it also tries to maximize its profits. About the recently introduced monthly pass scheme for the Tung Chung line, it is another piece of proof that the MTRCL is being hypocritical and only tries to deceive the passengers. Under this monthly pass scheme, passengers have to go from the terminus at Tung Chung to the terminus at Central before they can enjoy the concession. But for many people who may get off en route or transfer to another train, not only will it not be possible for them to pay less in fare but they will also have to pay more. After all these many years, the MTRCL has introduced the so-called "Ride 10 Get 1 Free" concessionary scheme. In last year alone, the amount of rebate in fares from the "Ride 10 Get 1 Free" scheme or the "Ride \$100 for Free Ticket" scheme is less than \$210 million. As for the new concession of "10% Discount for Same-day Second Trip", it is really mean. If a member of the public rides on 10 trips, the fare concession he gets is even less than that under the "Ride 10 Get 1 Free" scheme. It is likely that he will only get a 7% rebate of the fares he has paid.

I agree very much that all the figures are in the hands of the MTRCL and so when Mr Michael TIEN proposes that we may adjust the FAM, I would say that we have no bargaining chips to talk with the MTRCL. Every time when we discuss the issue with the MTRCL or the Government, they will advance the excuse of taking care of the interest of small shareholders. This is like an "Imperial Sword" that enables the MTRCL to speak plausibly and maximize its profits even after it has made a record-breaking amount of profits.

The Civic Party will certainly not agree from the outset that everything owned by the MTRCL should be bought back. But let us look at some facts. Before 2000, the MTRCL was not yet listed and the MTR Corporation operated under commercial principles during the 25-year period from 1975 to 2000. During that period, it can be said that the MTR Corporation was successful in its operation. It had the ability to increase the railway lines to cope with the need of society and even make reasonable increases in fares. The biggest mistake it has ever made is its listing in 2000. As a result, there is no more room for manoeuvre and thus we have this situation today. If we are not determined to evert this state of affairs and if we just want to make detours and do not get to the

crux of the matter, then it is useless if we talk about the Executive Council as a gate-keeper or reducing the fare increase by 30%, for we are just speaking to ourselves. How can we use any existing piece of legislation as the basis to allow the Executive Council to act as the gate-keeper? The Government also knows to say something like it is of paramount importance to take care of the interest of shareholders. And provided that this excuse of caring for the interest of small shareholders still exists, the MTRCL will not agree to adopting such a practice.

The other angle which we want to explore is the service performance pledge. Three incidents have occurred in this month alone. Someone fell onto the tracks because the gap between the platform and the train is too wide. For the other two incidents, they were not reported, such that some MTRCL staff members had to come forth to expose the cover-up. Some glasses broke at the Kowloon Tong Station and the screen door at the Hang Fa Chuen Station failed. As we can see from the past few years, after the merger, the failure rate for MTRCL trains for each 1 million trips as well as the overall failure rate has been going from bad to worse. The reason is none other than that the company wants to save money and it considers profits the most important goal to achieve. This accounts for the fact that the MTRCL has 25% of its repairs and maintenance work briefed out. It is therefore hard to achieve any quality assurance. Even those experts from Australia have made the criticism that this is not desirable. Moreover, the technology used by the MTRCL for articulation of train cars is very backward indeed.

To demand the MTRCL to improve its services is simply asking the tiger for its hide. Now we are talking about the MTR system in Asia's world city, but if we want to find a toilet, only 10 out of the 20 transfer stations are fitted with such a facility. For the remaining 10 stations, people will have to wait for eight to 10 years until the year 2020 — not counting any delay in the interim — before any toilet is provided. When we learnt that so many people had fallen onto the tracks every year, we asked the MTRCL to install screen doors. The first response from the company is that more money is needed. The second is, it is not sure when this can be done. As for the passageways for access by persons with disabilities, leaving aside stations which are far away, if we can just look at the Admiralty Station which all the officials and Members will use, we will find deplorable treatment for persons with disabilities. There is no lift for use by persons with disabilities and some very primitive ways are used to lift up the

wheelchairs and put them down. This is how the people are treated by a corporation which makes profits to the tune of tens of billion dollars a year.

Lastly, we have to settle scores with the MTRCL, to see if a buy-back of its shares will work insofar as the account books go. During the last 10 years, the MTRCL has made a profit of \$105.2 billion. The Government is given a dividend of more than \$81 billion or 77%. When the MTRCL was listed, the Government made a profit of \$10.2 billion, and over the years the bonuses and dividends which the Government has got amount to about \$26 billion. The total is some \$30 billion. If we use the closing price today plus a 25% premium, it is about some \$50 billion. We can make a rough estimate from this. We need only pay some \$19 billion to buy back all the shares of the MTRCL. The profit made for one year is even more than this amount. But what we get in return is autonomy. This will free us of the control of the managing director and the board of directors of the MTRCL who are paid handsome remunerations and they can never advance the excuse of protecting the interest of small shareholders in pushing members of the public to the edge of the cliff. I hope very much that Members can see clearly what should be done to achieve this aim. We agree that the FAM should be reviewed and that a fare stabilization fund should be set up. But these are not enough. So long as the shares of the MTRCL are not bought back, we can hardly fight for the interest of the people.

Thank you, President. I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, I did not make this sign only today. I made this when the MTRCL had a fare hike last time. It says to this effect: "Fare hikes by the MTRCL are unjust". I would like to remind the Secretary that last time the MTRCL made use of the FAM to increase the fares by 5.4%. Now the MTRCL has a daily ridership of 4.58 million passengers. By some simple reckoning, all these people have to pay 5.4% more for no justifiable reason. Secretary, what makes people so furious? President, the MTRCL has made a huge profit of \$14.7 billion, but it still wants to increase the fares. How many companies in Hong Kong and all over the world can make a profit of \$14.7 billion? Very few. A more frustrating point is that the Government has officials who are members of the board of directors of the MTRCL and the Government is also the largest shareholder. Secretary, you will be a member of

the board as well. The four previous government officials were members of the board. It is you people who approved of its proposal to increase the fares by 5.4%. The SAR Government has degenerated into a money-making and blood-sucking machine. It is sucking the meagre and hard-earned money of the people. The minimum wage is only \$28. If someone commutes to and from Tin Shui Wai or Tung Chung in a day, they would have to spend at least some \$40. They have to work almost for two hours to make that sum of money. You may think this is no big deal and you approve of the fare hike as usual. But have you ever considered the affordability of the people? No, you have not.

Then you let the MTRCL play all kinds of tricks by launching these so-called concessions which are nothing but a hoax. The so-called "Ride 10 and Get 1 Free" is meant to cheat. A security guard said to me that he only worked on Saturdays and Sundays, how could he take 10 trips in order to qualify for the fare concession? It is required that passengers must ride 10 trips from Monday to Friday to qualify, and people cannot qualify by riding from Tuesday to Saturday. So passengers who do that cannot enjoy the fare concession. The entire idea of this so-called concession causes hassle to the people as well, for they are required to line up to get a free ticket. This is giving them trouble. And it is like they are being given some alms. The MTRCL is one such corporation.

What makes people most unhappy is that this corporation manages to make so much money because of the Government. We know those above-station properties of the MTRCL all sell very well. Now the above-station properties of the Tuen Mun Station of the West Rail have gone up to a price of \$13,000 per square foot. All this money is really given by the Government. It gives the land and returns from property sales to the MTRCL. And it still lets the corporation fleece the people. The MTRCL is really having a great advantage. It gets land and properties and on the other hand, it applies for fare hikes. It is reaping profits from the people. This is how it makes its \$14.7 billion profits.

Next, we can take a look at the kind of services provided by the MTRCL. Apart from delays, on the question of installing screen doors, it said that it had to charge each passenger 10 cents per trip in order to install such screen doors. But it has yet to complete the job. The progress made in this respect is really slow.

On building toilets in the stations, the plan has yet been completed to date. This is really a laughing stock for an international city like Hong Kong. Up to now the MTRCL has not yet built toilets in all the stations. The plan has been stated for many years, but the MTRCL just takes a couldn't-care-less attitude. This is the MTRCL.

The most outrageous thing is: where does the money it makes go? Its new CEO or the former one, CHOW Chung-kong, are all like this. Now this CEO is called Herbert WALDER. And how much is his salary? More than \$16 million a year or upwards of \$1 million a month. Members, the Chief Executive of the SAR earns a monthly salary of \$400,000, but WALDER makes three times as much. This is really outrageous. You are willing to spend this huge amount of money for no reason and you think that it does not matter. I do not know what the Government is doing.

President, looking back at history, why have things developed to such a deplorable state? First, if we look at the history of the MTRCL, we know that it used to be run by the Government and it was not privatized. But things did not look right at that time and it was said that the corporation operated under prudent commercial principles and the people were simply neglected. Things went from bad to worse when the corporation was privatized. The privatization is never an honourable act and you the President was also involved. At that time the DAB opposed it while the FTU lent it support. Then Nicholas NG put his hands around you and did not let you cast your vote. Do you still remember that? In this way, this dishonourable arrangement to list and privatize the MTRCL was passed.

In 2007, the MTR had another merger and it acquired the Kowloon-Canton Railway Corporation. Then more people were made to suffer. At that time, the Hong Kong Confederation of Trade Unions opposed it. As for the FTU and the DAB — I do not know why the DAB did not oppose it on that occasion — you people always protest against fare increases now but I think it is useless. Had you people not endorsed the listing then, you can exert pressure on the Government now. So you are keeping a blood-sucking monster. In fact, we have been keeping two such blood-sucking monsters ever since the reunification, one is The Link and the other is the MTRCL. This is the history.

Things went really bad after the listing of the MTRCL. With the introduction of the FAM, it means that fare hikes are now automatic. The people suffer more as the inflation worsens. This is because the people are already having a hard time with the soaring inflation. Now you permit the MTRCL to raise its fares. You say this will be reviewed. But we do not know what the conclusion will be after review. So we from the Labour Party have got three major recommendations. First, change the formula for computing fare adjustments. This is to add a Train Service Disruption Factor. How are we to make use of this factor in making the calculation? If the number of incidents is nil to five, then no deduction will be made. If the number of incidents is six to 10, then the proposed increase will be deducted by 0.2 percentage point. When the number of incidents is 11 to 15, the proposed increase will be reduced by 0.5 percentage point. Then for every incident thereafter, the proposed increase will be reduced by 0.1 percentage point. The idea is to require the MTRCL to provide good services. Any service disruption of more than 20 minutes is counted. As to how this period of 20 minutes is to be calculated, I think this can be done and some monitoring can be undertaken. Earlier on Mr Michael TIEN said that such calculations will not work. But I think they can be done. How can we afford not to count the delays in service?

I have to make it clear that the fare increase cannot be higher than this formula. This is a ceiling. The numbers found in the ceiling do not mean that the MTRCL can raise its fares to that limit. Any proposal of fare increase will have to get the approval of the Executive Council and it must be scrutinized by the Legislative Council. No fare increase can be made if the Legislative Council votes the proposal down. So the first point is about the ceiling.

Second, about scrutiny by the Legislative Council. Mr Michael TIEN has said that under the principle of executive-led government, there is no need to submit the fare adjustment proposal to the Legislative Council. But it is precisely this executive-led approach that we oppose. It is because the executive authorities do not represent the people and so the Legislative Council has to effect monitoring. Since the Legislative Council has to effect monitoring, then the Legislative Council should conduct scrutiny and vetting. So the second point is about the right of scrutiny and vetting of the Legislative Council. This is meant to ensure that the Legislative Council can play a gate-keeping role instead of the unregulated situation now.

Our second proposal is that a rail fare stabilization fund should be set up. Unlike other funds in general, we think that consideration should be given to properties and real estate. The reason is that the Government allows the MTRCL to make money from properties. So we want that some of these returns be set aside to subsidize the fares. Some people suggest setting aside money from shareholders' returns. But that does not work. We think that since land belongs to the Hong Kong people, income from this should be allocated to subsidizing the fares. We suggest that, for example, for the first \$2 billion of profits made, 10% should be set aside for that purpose. For the next \$2 billion made, 20% will be set aside, and for the remaining sum, \$3 billion will be set aside. In the year 2011, for example, of the amount of \$4.9 billion, some \$800 million should be allocated to the rail fare stabilization fund. This is the second proposal made by us from the Labour Party.

The third proposal, we hope very much that insofar as the overall regulation is concerned, the Secretary can have some innovative thinking. The MTRCL says that the FAM should be revised and it also says that the formula should be used. Are you people prepared to return the power of scrutiny and vetting to the Legislative Council? How will you people perform the gate-keeping duty to pre-empt the unregulated situation as in the past?

Now this monster of the MTRCL has been produced. We agree with what the Civic Party says, that the shares of the MTRCL should be bought back. There is this often cited argument that some sort of balance can be struck between the market and the community and the Government is responsible for this task of striking a balance. But has the Government made such efforts? No balance has been struck for so many years. For so many years, we fail to see the Government striking a balance between the people and the market and it is the people whose interests are always harmed and sacrificed. And in the end it is the giant consortium inclusive of the Government — on this occasion it is the shareholders who represent the consortium — who reaps a hefty profit. But for us, we can never see such a balance.

All this talk about striking a balance is a sham. We therefore demand that the MTRCL should be turned into a public body. It is only when the Government has done this that the desired effect can be obtained and that the people's life can really be taken care of. LEUNG Chun-ying always says that livelihood matters are never trivial (*The buzzer sounded*)

PRESIDENT (in Cantonese): Mr LEE, speaking time is up.

MR LEE CHEUK-YAN (in Cantonese): as I see it, it would really be a grave matter if the Government does not do this.

Thank you, President.

MR FREDERICK FUNG (in Cantonese): President, the SAR Government which owns 76% of the shares of the MTRCL has all along condoned the corporation to earn every cent and dollar for every trip the people take. The corporation makes money every year and raises its fares every year. It seems that this has become a normality. The MTRCL gives full play to the avid nature of the businessman caring only for profits and reaping the most profits possible.

President, ever since the fare adjustment mechanism (FAM) was activated in 2009, the rates of fare increase by the MTRCL were 2%, 2.2% and 5.4% respectively. The accumulated rate of increase in those three years is close to 10%. On the other hand, the MTRCL makes big money every year, from \$9.6 billion in 2009, to \$12 billion in 2010 and to \$14.7 billion in 2011. It can be said that it earns more and more profits while the fares are increased more and more. Why is that so? The people can never take this. It is an obvious flaw of the FAM.

Also, this shows the inhuman nature of the Government. Last year, the MTRCL made such a huge profit, that is, \$14.7 billion, and as the largest shareholder of the MTRCL, the Hong Kong Government received as much as \$3.3 billion in dividends. While the public coffers are inundated, the people of Hong Kong have to suffer. They have to bear the increases in fares as well as the general rise in prices triggered by the MTRCL. I want to ask: Is the Hong Kong Government a demon or not? Does it base its action on the interest of the people or does it adopt the mentality of a businessman and care about nothing but profits?

President, as we know, any modern and civilized government should consider the interest of the people first and base its policies and measures on that.

It should make the will of the people its guideline. But our Government just hides behind the commercial principles and put up the interest of small shareholders as the shield. In fact, it is earning every single cent of the people. Every year the public coffers are fattened by the returns from the MTRCL. The contradiction here is obvious. It is like a person playing two roles. Is our Government of the people, or is it no more than a greedy businessman?

Perhaps at first the Government wanted to enhance the efficiency in operation and boost public demand for transport. And so this little tiger of the MTRCL was nurtured. Now this tiger has become a scourge and problem. The Government was controlled by the MTRCL, having lost its control over the corporation. This monster dominated our entire transport network and dictated the determination of transport fares. Even the Government had to come to the defence of this money-first management mode of the MTRCL. All the talk about people-based policies had been thrown away. In the end, the Government only made use of the opportunity of the merger of the two railway corporations to set up the FAM. The FAM is inherently flawed. It makes use of the changes in the composite consumer Price Index and the wage index of the transportation industry as the factors to be considered in its formula.

Initially when the two railway corporations merged, the synergy should have been that the MTRCL would lower its fares at once. The introduction of the FAM did indeed bring a tiny ray of hope to the people. At that time, most people were unhappy about the fact that MTR fares only increased and had never been reduced. In particular, when the financial crisis struck in 1997 and when the economy was at its doldrums, the MTR Corporation acted in blatant disregard of public interest and did not make even the slightest concession. It refused to ride out the rough times with the people. At that time, the people thought that when a seemingly objective formula was introduced, the effect could be that the two railway corporations would no longer enjoy autonomy to set the fares by themselves. For the Government, it just made use of this and bundled this up with the merger of the two railway corporations in the hope to garner public support.

The problems of that formula are beginning to crop up. As I said in the debate at that time, although the new FAM could have the effect of breaking the monopoly of the two railway corporations in setting fares, flaws still existed in the FAM. Examples of the problems are the inability of the mechanism to

reflect the real-life situation of the people and their affordability. No consideration was also given to how extreme situations can be coped with.

And so the devil in the details is becoming more and more apparent. Society clamours for a change in the formula. The call for change is particularly fervent when the MTRCL made use of the excuse of showing respect for the FAM but actually asked avidly for a 5.4% increase in fares. The people responded by slamming the corporation for asking for such a hefty increase when it had made huge profits every year. The people found it impossible to take in. At that time, both the Government and the MTRCL put up a defence by claiming that they were only showing respect for the FAM. And so some of these so-called fare concessions were rolled out to pacify the public. But as we know, these measures were actually impractical and they just served to maximize the profits earned by the MTRCL.

Under the operation agreement entered at the time of the merger, on the fifth year after the merger and for every five years afterwards, the Government or the MTRCL may request a review of this FAM. It will be exactly five years from the merger by December this year. The Government should have conducted a consultation exercise on the FAM a long time ago. But the Government acted furtively and on 17 September it announced that the FAM was to be reviewed. But the news was only broken in a press release and the consultation period was to be just one and a half months. The consultation paper is miserably thin and there are just five pages in it. It only gives an account of the origin of the FAM, the numbers and uses found in the formula concerned and how fares are adjusted every year since the FAM was put in place. No mention is made of any new proposals.

President, the people would be at a loss if they just read this paper. This kind of consultation and its conduct run counter to the established practice of consultation previously conducted by the Government. What is the reason for it? Is the consultation exercise meant to put a hasty end to things? Or if the reality is to safeguard the interest of the MTRCL and the consultation exercise is only a smoke screen? President, this consultation exercise is furtive, hasty and sloppy. It cannot escape the discerning eyes of the public and avoid their queries. So the authorities have to extend the consultation period most reluctantly. Besides, the former Secretary for Transport and Housing also said at the beginning of this year that the Government had hired a consultancy to study

the FAM and how new components are to be added to the formula in order to reflect the operation costs, profit level, operation efficiency, service performance and public affordability, all meant to improve on the FAM. The report of the study will be used as reference in the review. But to date the contents of the consultancy report have not yet been made public and there is no way the public can know what the position of the Government is regarding the FAM. I hope that the authorities can give an account of the full contents of the report soon and in an honest manner.

President, the amendment I propose is already found in the election platform of the Hong Kong Association for Democracy and People's Livelihood (ADPL). This is consistent with our stand and a clear show of our position with respect to the FAM. We demand that components be added to the formula to better reflect public affordability, profit level, income from above-station properties, rental and overseas investment, operation efficiency and service performance. All this will prevent the MTRCL from increasing fares wantonly while making substantial profits. We demand that the Government should use the dividends it receives to offset fare increases in some measure, and establish a fare stabilization fund to mitigate the impact of soaring fares on the public. In addition, we are concerned about problems in fare determination by the MTRCL, such as the ambiguous and unfair standards used. We urge that the railway fare structure be revamped and the MTRCL should offer more cross-line and same-line monthly ticket schemes as well as concessions for MTR interchange to other means of transport and set up more MTR Fare Savers. These are meant to benefit all the people of Hong Kong.

President, I wish to say that the people have a clear view in improving the FAM. I implore the Secretary not to follow the practice of the Chief Executive in making use of flowery language, covering up mistakes and trying to gloss over things. I urge the Secretary to return to the path of righteousness and proceed on it. I urge him to drum up his courage and fight with the MTRCL on behalf of the people. I urge the Government to make the collective interest of the people its primary concern.

I so submit.

MR WU CHI-WAI (in Cantonese): President, the Democratic Party has proposed an amendment to Mr Michael TIEN's motion on "Executive Council as

gate-keeper for MTR fares". The contents of the amendment are divided into a number of parts. The first part is about the FAM. We think that a study should be conducted to include more components such as public acceptance and affordability, the MTRCL's incident occurrence figures and its profit level, and so on, in the FAM. This can hopefully enable MTR fares to fully reflect the true situation of people's living and service quality of the MTRCL.

On the other hand, we also demand in this motion debate that the MTRCL should offer territory-wide day passes, weekly passes and monthly passes. By making a change in the fare structure, it is hoped that the people can benefit. As for the Government, we know that the MTRCL is a listed company, but since the Government is a major shareholder, it gets a large amount of dividends from the MTRCL each year. So we suggest that the Government should set aside a certain percentage from the dividends it gets each year for the setting up of a fare stabilization fund. Another option is that a certain percentage of the property income of the MTRCL should be set aside to set up such a fare stabilization fund.

Members may ask, why do we want the MTRCL to do such a large number of tasks? As a matter of fact, the reason is that all along the MTRCL operates on the strength of government policies tilted in its favour. This tilting of government policies is basically in two aspects. First, the policy of according priority to railways. The Government likes to talk about according priority to railways and that it is an essential policy. Since the amount of money invested in the building of railways is huge, if there is no such a policy to accord priority to railways, this may affect the potential income from the entire railway network. But the objective effect is, during the some 20 to 30 years of its development, this policy of according priority to railways resulted in the elimination of competition as well as competition from other means of transport. It is under this policy of giving priority to the railways that when the MTRCL opens up some new railway network, the bus companies will not be allowed to operate any routes running in parallel to the railway network. This affects competition in the market and allows the MTRCL to become a public transport operator enjoying a clear and unchallenged monopoly. And its service quality and fares will not be restrained by any kind of competition in the market.

We can also see that that the MTRCL manages to get such a substantial amount of profits is because it relies on the proceeds from property development

granted by the Government. In fact, income from property development is a very important source of the profits of the MTRCL. For example, in 2011 the Executive Council endorsed a plan to build the South Island Line (East) and the Kwun Tong Line Extension. The costs of construction for these two projects are only \$17.7 billion and the projects are expected to be completed in 2015. But the Government has also granted the corporation the right to develop the former Wong Chuk Hang Estate and phase one of the former Valley Road Estate as a kind of financial subsidy for these two projects. According to some market valuation, the value of these two sites is more than \$79 billion in total. So compared to the costs for building the South Island Line (East) and the Kwun Tong Line Extension, there is a huge amount of transfer of benefit to the MTRCL in terms of the land premium concerned. This practice of giving away land as a means of financial subsidy is actually a transfer of benefit in disguise, enabling the MTRCL to make incredibly huge profits.

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

We can look at the profits made by the MTRCL during these few years past. In 2009, it was \$9.636 billion; in 2010, it was \$12.172 billion and in 2011, it was \$14.848 billion. The dividends paid to the Government were \$920 million, \$1.3 billion and \$3.1 billion. This shows that in this operation, the Government colludes with the MTRCL, so to speak.

We can also take a look at the contributions made by all kinds of income. The revenue from property development over the last three years was \$3.5 billion, \$4 billion and \$4.9 billion respectively. Revenue from transport operations was \$2.1 billion, \$2.8 billion and \$2.7 billion; and revenue from station commercial business was \$2.3 billion, \$2.4 billion and \$2.8 billion. In these figures, it is evident that most of the revenue of the MTRCL comes from property development and station commercial business. In terms of transport operations, the revenue which the MTRCL gets every year is really not too much, but the corporation has to impose the pressure of fare rise on the public.

We can just take a look at the money involved in these so-called promotion items rolled out by the MTRCL for the sake of fare rise. We can see that the

money involved in these items only takes up a very small portion of its revenue, somewhere between 14% and 16%. The MTRCL always says that the additional income obtained from the fare increase will be ploughed back to the public by means of rebates and concessions. But the amount cannot be reflected in the figures. This proves that the public is justified in thinking that the MTRCL uses deceptive tactics and furtive means to force its fare rise through.

What about the quality of the operation of the MTRCL during these few years? We can just take a look at that. The MTRCL has an "eight-minute notification system". But starting from the year 2007, the number of incidents has been rising year after year. The delay in notification is getting more and more serious. As for operation performance in other aspects, with fewer competition and public censure, as well as in an attempt to blow up its revenue, the MTRCL has briefed out much of its work such as repairs and maintenance. The result is that repairs and maintenance work is affected. Can this be made a factor to be considered under the FAM? This warrants consideration by the Government.

We can also see that during the period from 2006 to 2011, there were many incidents of persons falling onto the railway tracks. The number remains at somewhere between 60 and 90 incidents each year. These figures show that although the MTRCL has collected a charge of 10 cents for installing screen doors for every trip we take, it still wants to save resources and so it has adopted a delaying tactic and tries to avoid the expeditious installation of screen doors in the stations. We find this unacceptable.

We from the Democratic Party think that the Government should improve the FAM as soon as possible. It should incorporate factors like public acceptance and affordability, the MTRCL's incident occurrence figures and its profit level into the adjustment rates. This is to ensure that MTR fares are kept at a reasonable level and reflect the MTRCL's service quality. The Government should study the possibility of allowing the Executive Council to act as the gate-keeper and vet the adjustment rates of the MTRCL to see if the rates are reasonable. Besides, the eight-minute notification system should be enforced stringently to ensure that the MTRCL shall inform the public quickly after an incident has occurred. This should also be made a factor of consideration in assessing the performance of the MTRCL when the fare adjustment rates are to be determined. Also, I urge the MTRCL to offer territory-wide monthly passes

at reasonable prices as well as day passes and weekly passes for all the railway lines. These will benefit all passengers, especially those wage earners, by reducing their financial burden. Besides, I also suggest that a fare stabilization fund be set up to curb the rate of fare increase.

Mr Michael TIEN has mentioned the issue of dedicated funds for dedicated uses. I would like to point out that this is an established government policy (*The buzzer sounded*) I hope very much that through the

DEPUTY PRESIDENT (in Cantonese): Mr WU, speaking time is up. Please stop.

MR WU CHI-WAI (in Cantonese): Well, okay. Thank you.

MR TANG KA-PIU (in Cantonese): I remember that in the last motion debate I talked about the problem of young people in Tung Chung whose development was hampered by the expensive transport fares. The Under Secretary, Mr YAU, said then that he would like to leave the issue to the discussion today. However, I do not wish to talk about Tung Chung today, because I have all along remembered some other remarks made by Mr YAU. At the end of October, I proposed in this Council that the consultation period for the FAM be extended until the end of this year. Mr YAU said that the matter could not be allowed to drag on for so long because it would take time to negotiate with the MTRCL. Since then I have been pondering seriously over the question of why the Government has to negotiate with the MTRCL and for so long. The Hong Kong Government is the major shareholder of the MTRCL and if it is negotiation with the China Light and Power Co. Ltd., we can imagine that it is to negotiate with the KADOORIE family; and when it is to negotiate with the Hongkong Electric Co. Ltd., it means talking with the richest man in Hong Kong, then what about negotiating with the MTRCL? With whom will the Government negotiate? The Board of Directors? The Chief Executive Officer? Or the 230 000 small shareholders?

Now the Board of Directors of the MTRCL has 12 members, four of whom are related to the Government. The Chief Executive acts by virtue of section 8 of the Mass Transit Railway Ordinance to appoint the Secretary for Transport and

Housing and the Commissioner of Transport into the Board. The Secretary for Financial Services and the Treasury is appointed to act on behalf of the major shareholder, that is, The Financial Secretary Incorporated. The major shareholder appoints, Dr Raymond CH'IEN, as the chairman. These four persons are non-executive directors. Jay Herbert WALDER is the latest executive director and CEO. The other seven persons are independent non-executive directors, including two Members of this Council, Mr NG Leung-sing and Mr Abraham SHEK. The annual report of the MTRCL stresses that these seven directors "contribute to ensuring that the interests of all shareholders of the Company are taken into account by the Board". I would not question the integrity, capability and independence of these seven directors, but I wish to know when deliberation is made in the Board to discuss train fares, have these independent directors who form a majority in the Board ever thought about the feelings of the people and the corporate image of the MTRCL, that is, the corporation has changed from being the pride of Hong Kong to an abominable pest? As for the four directors related to the Government, are they unable to override any decision made by the majority of directors who represent corporate interest or do they just tie their own hands, do not make their position known and do not attend the meetings? Like Secretary Prof K C CHAN who is not here today, in the seven board meetings held, he was absent for four times. And the result of this is the people are at the mercy of the MTRCL and they are just fleeced.

As stated in the annual report of the MTRCL, directors appointed by the Chief Executive should take into account the interests of the corporation and the shareholders and should there be any conflict of interest between the corporation and the Government, these directors will have to abstain from voting. Then what will they do if there is a conflict of interest between the corporation and society? On 26 May 2006 when this Council discussed the merger of the two railway corporations, the paper submitted by the Environment, Transport and Public Works Bureau made special mention of government officials making good use of their understanding of public interest and aspiration as well as the acumen of the regulatory body to give their advice to the Board and this will enable a balance to be struck between prudent commercial principles and public interest. So just which one of the above remarks is true? Both the 7 million citizens and I want very much to know how these officials who sit here can represent public interest in the Board and whether they have done so as appointees of the Chief Executive.

As for the Board, does it really represent the interests of the 230 000 small shareholders? The MTRCL always talks about corporate interests. According to the Articles of Association of the MTRCL, it is required that written nominations of candidates for election into the Board must be submitted before the general meeting is called and nominations are to be made by two or more shareholders with a stake of more than 10% of the shares. This practice is really a fairy tale. According to the HKExNews, currently there is not even any one individual or body corporate holding 5% of the shares of the MTRCL. It is impossible to gather enough nominations from shareholders holding 10% of the shares in such a short time. So all along, these so-called independent directors are nominated by the Nominations Committee in the Board and approved by the Board and at most they are elected in a general meeting when some directors step down. It is called a cooling period. It seems that these independent non-executive directors are always there and they will come out of thin air. They do not come from below and represent the small shareholders.

When the MTRCL chases after profits in this way, who will stand to benefit? Will the small shareholders really benefit? Or the SAR Government which gets dividends each year to the tune of some \$3 billion? I only know that last year 10 people from the senior management of the MTRCL got salaries and bonuses amounting to \$57 million. The topmost is Mr CHOW Chung-kong who has just retired. He has an annual salary of \$15 million, which is 180 times more than the annual salary of a worker doing some outsourced cleaning work. Would it be right to say that a CEO is 180 times more superior to a worker? Now he is saying that the minimum wage will push inflation higher. How ridiculous. Is it true to say that raising the fares will not affect inflation? For three years, the total fare increase by the MTRCL is 9.5%, whereas the inflation rate is only 8.2%! Just what has pushed inflation up? I think that is crystal clear. I also think the new CEO, Mr WALDER, who comes from New York, the epitome of capitalism, will be amazed and shocked to see such blatant profiteering by the MTRCL and the indecent wealth of its top management.

If we look at other places, like London, its Transport for London is a railway corporation with the mayor as the chairman. It is not listed but its business performance is good. Last year, it made revenue to the tune of £1.9 billion and it is not bad at all. Of course, the mastermind or the person in charge is not the mayor. The mayor does not get any salary. It is the

vice-chairman and his salary is only £115,000 a year, or just some HK\$1.4 million. This is really good value for money.

I am sure this new-term Government will need some time to deal with this issue. I can see that the new Secretary, Prof Anthony CHEUNG, will want to solve the problems. What are the problems waiting to be solved? They are problems like the expensive MTR fares and their not being subject to any control by the public. I therefore have a suggestion. This is found in point (a) in my amendment. I think there is no need to buy back the shares of the MTRCL. A very important thing is that apart from the Executive Council acting as the gate-keeper, the Government should regain the decision-making power of the Board of the MTRCL. This is point (a) in my amendment. And after looking at all the amendments proposed, I find that my amendment is the only one which raises this idea.

Under the Listing Rules, actually, a board of directors will only need three independent non-executive directors and these directors form one third of the number of directors in a board. The Articles of Association of the MTRCL only provides that the quorum of a meeting of the Board is four persons and there is no upper limit for meeting quorum. So even if we keep the present composition of the Board, that is, with seven independent non-executive directors and if the Chief Executive is allowed to appoint five more persons who are committed to serving the interest of society as additional directors of the MTRCL on top of the three government officials, then we will have eight directors not counting the chairman who can act on behalf of public interest. A more important point is that the Board can play the first gate-keeping role in the Board regarding MTR fares. It is unfortunate that section 8 of the Mass Transit Railway Ordinance provides that "The Chief Executive may appoint not more than three persons to be additional directors of the Corporation". I would suggest that the provision be amended to delete the word "not". There is really a big difference between one word. The whole situation can be reversed and it would even obviate the need for the Executive Council to be a gate-keeper.

It remains, of course, that there are consultation and procedures for legislative amendment. Actually, the Chief Executive can use his power to appoint the third person, for only two persons have been appointed now. A person can be appointed as the third director provided that he can represent the people. The Chief Executive may appoint the chairman of the Panel on

Transport who is sitting in front of me or Mr TANG Ka-piu, or Mr Michael TIEN, if only that person can defend public interest when he is appointed to the Board and he can show a poise and determination to regain the decision-making power from the MTRCL.

Mr Michael TIEN, who proposed the original motion, could have once been a person involved in all this and so the original motion is rather conservative. His focus is on the Executive Council as a gate-keeper, something we from the FTU would accept. However, it would be rather pessimistic to abandon the review mechanism and I do not think the public will accept it. During the period from 2008 to 2011, the net profits of the MTRCL have risen by 80% and its share prices by 40%. Its market share has grown by 8%, revenue per car has risen by 6% and ridership by 13%. When these are coupled with the intangible brand effect, the reduced costs of competition, multiplied sourcing advantages and this snatching of more than \$100 billion of the taxpayers' money to build new railways, how can its productivity factor be nil? Or how will it become 0.1 five years down the line with all this almsgiving? The immense advantage of the merger of the two railway corporations on the MTRCL's productivity has been grossly underestimated. The MTRCL changes into the automatic gear of raising its fares and builds railways with public money and it is given the property development right. It is growing fat from three lucrative sources. How can the people of Hong Kong not get furious? It can be seen that this FAM is problematic and it is the community's consensus that there should be a revamp.

Today offers a good opportunity for Members to present their proposals. Owing to the time constraint, other colleagues from the FTU will supplement points (c) to (g) in my amendment. I wish to mention again that 12 years ago, when the Environment, Transport and Public Works Bureau was pushing for the listing of the MTR, it pointed out that franchised buses were the greatest competitor for railways. It said that buses charged a lower fare and they were more flexible. With competition, the services provided by both parties would be enhanced and fares would become reasonable. Now the MTRCL dominates the market and it is the sole winner. Buses are on the decline. Would the public become a loser? It is therefore a very important issue. But that depends on whether or not the Government will have the determination, and it should at least accept my suggestion, put it into practice, and regain the decision-making power in the Board of the MTRCL. Thank you, Deputy President.

MR FRANKIE YICK (in Cantonese): Deputy President, when the Government implemented the rail merger and designed the Fare Adjustment Mechanism (FAM), it was hoped that the fare autonomy of the MTR Corporation (MTRC) before merger could be replaced by a system under which the percentage of fare adjustment in future could be determined in a highly transparent, objective and fair manner. It was also meant to prevent the MTRCL from increasing its fares at will while ensuring that it has sufficient resources to conduct maintenance and enhance service quality. The intention of the FAM was good, but it has some obvious deficiencies. For example, neither the MTRCL's annual earnings nor public affordability was accounted for. As a result, the MTRCL can still drastically raise its fares despite huge earnings.

According to the current FAM formula, the MTRCL only takes into account the changes in both the Composite Consumer Price Index (CCPI) and the Nominal Wage Index (Transportation Section) (Wage Index). If the outcome is more than 1.5%, the mechanism will automatically be triggered. If it is within the range of 1.5%, the unadjusted percentage will be rolled over to the next annual fare review for calculation. Even if the value of productivity factor were increased from 0% to 0.1% from 2013 onwards, the percentage increase may not help create a disincentive for the MTRCL to raise its fares. Unless there is deflation, the practice that the fares will only rise regardless of economic conditions will be sustained. Therefore, except that the outcome of calculation in the first year after the rail merger was carried forward to the following year since the unadjusted percentage was less than 1.5%, the fares were adjusted automatically under the FAM formula for the past three years in a row. The percentages of fare increase are 2.05%, 2.2% and 5.4% respectively.

Despite a huge profit of \$14.7 billion last year, the MTRCL still drastically raised its fares by 5.4%, a percentage way over this year's expected inflation rate of 3.7%. The inherent design flaw in the mechanism exactly perpetrates its failure to reflect the actual socio-economic conditions of Hong Kong. As the formula only calculates the year-on-year percentage change in both the CCPI and Wage Index for December of the preceding year, the data of a month alone, therefore, it is by itself an inadequate reflection of the economic conditions of the preceding year and an inaccurate forecast of economic environment for the coming year. Furthermore, the current FAM of the MTRCL is structurally simpler than the FAM adopted by the three bus companies because the MTRCL

has taken no consideration of the basket of factors including changes in operating costs and revenue since the last fare adjustment, forecasts of future costs, revenue and return, the acceptability to and affordability of the public as well as its service quality, and so on.

Owing to the synergy of the merger of the two railway corporations, the MTRCL has reaped lucrative profits from the Government's grant of exclusive development rights of the above-station properties. As the Government continues to expand its transport policy under which the railways form the backbone of the transport system, the MTRCL keeps on increasing its market share of public transport, leading to a steady growth in fare revenue. The MTRCL's net profit has increased from \$4,294 million in 2001 when it was first listed to a whopping \$14,716 million last year (2011). The profit has more than tripled. In other words, the MTRCL has built up a solid financial foundation. In spite of its hefty earnings, however, the MTRCL can still initiate the FAM for a fare hike under the existing operational agreement, only to end up attracting seething public discontent. Since the FAM can be reviewed five years after its implementation under the operational agreement, the Liberal Party hopes that the Government can revise the mechanism having regard to corporate social responsibility and that the fare is determined according to public affordability.

We often hear of railway incidents causing disruption of service. The "eight-minute notification system" often failed to materialize whenever there was an incident, making the public suffer and grumble. We must bear in mind that railway is our main transport system, carrying an average of 3.9 million passenger trips every day. Therefore, any incident that leads to a disruption in railway service can cause inconvenience to the public. In addition to enhancing maintenance, the MTRCL also has to strictly adhere to an effective notification mechanism and dissemination of information to minimize the impact of incidents on the public. Since the pay adjustment and even the rate of such adjustment of wage earners depends on their performance, it is not at all unreasonable to factor the overall performance of the MTRCL into the calculation of its rate of fare rise.

The MTRCL raises its fares every year, and the accumulated increase has reached almost 10% over the past three years, rendering a heavy burden imposed on the people in terms of travelling expenses. For the sake of alleviating the public's burden in travelling expenses, the Liberal Party proposes that the

MTRCL implement a readily comprehensible profit-sharing scheme under which 5% of the profits from its core business and property development (excluding the property revaluation portion) is drawn each year to offset the extent of fare increases. If any profit-sharing proceeds remain after fully offsetting the extent of fare increases, the balance can be retained as accrual in the special reserve for stabilization of fares. The accrual can be used to lower the rate of fare increase in the future. If the proceeds cannot fully offset the extent of fare increases in the relevant year and the rate difference is less than 1.5%, we propose to follow the current practice, that is, rolling it over to the following year for subsequent handling.

Take the past three years as an example. After excluding property revaluation, the profits in 2010, 2011 and 2012 are \$7,303 million, \$8,657 million and \$10,468 million respectively. If 5% were taken from each of them to offset the extent of fare increase, the proceeds in 2010 and 2011 not only offset the rates of fare increase for those years, surpluses could also be accounted to the special reserve for fare stabilization. As for 2012, although the proceeds cannot offset the extent of fare increase under the mechanism, the surpluses in the special reserve accumulated during the previous two years can completely offset the rate of increase.

We only propose to take 5% of the MTRCL's profits from its core business and property development for profit sharing. Let us take 2010 as an example when the profit that year was relatively low. Even \$370 million was taken out from the profits of \$7.3 billion, the MTRCL still has \$6.9 billion left to cope with various expenditures on train operations and pay for some \$4 billion on repairs and maintenance to maintain the quality of railway services. As for the minority shareholders, a 5% reduction of MTRCL's profits has little impact on them. In other words, with the profit-sharing scheme, passengers are immuned from any sharp rise in fares. With the availability of a special reserve for stabilizing fares, any drastic increase in fares can be avoided, effectively alleviating the burden of the public. Besides, it can obviate any dispute which may arise from the annual fare adjustment exercise. The scheme is definitely worthy of the Government's consideration.

The original motion suggests giving the Executive Council the power to make final fare adjustments. But the Liberal Party has reservations about this as this will only politicize the fare adjustment exercise. By the same token, conferring on the Legislative Council the right to vet the MTRCL's fare

adjustment rates will only aggravate its complexity and unpredictability, subsequently affecting its business operations. Therefore, we consider that the Legislative Council should maintain its current monitoring role.

Deputy President, I so submit.

MR CHAN KAM-LAM (in Cantonese): Deputy President, the merger of the MTR Corporation (MTRC) and Kowloon-Canton Railway Corporation in 2007 also introduced a Fare Adjustment Mechanism (FAM) to enable fares to go upwards and downwards. The FAM contains a direct-drive formula that takes into account changes in the Composite Consumer Price Index (CCPI) and the Nominal Wage Index (Transportation Section) (Wage Index) announced by the Census and Statistics Department. As the mechanism is highly transparent and enables upward as well as downward adjustment of fares, the public were very receptive at that time since it could replace the autonomous fare determination mechanism that the MTRC had been enjoying.

However, the MTRCL has raised its fares three times over the past five years under the FAM. The respective rates of increase were 2.05%, 2.3% and 5.4% (for this year). However, those three increases in fares happened at a time when Hong Kong was suffering from inflation. The MTRCL raised its fares by 5.4% especially when Hong Kong recorded an inflation rate of 4.5% this June. The public has also noticed that the MTRCL has made an annual hefty profit of \$9.6 billion, \$12 billion and \$14.7 billion during the past three years.

Deputy President, the upward adjustment of fares over the past three years has construed an image of public discontent. With the grassroots' affordability being eroded away by inflation, the MTRCL could still advance sound reasons to raise its fares according to the mechanism despite billions of earnings.

The MTRCL introduced promotions like food coupons, "Ride \$100 for Free Ticket" and the recent "Ride 10 Get 1 Free" whenever a fare hike was announced, but such promotions are always insignificant in comparison to the rate of increase. Moreover, the numerous restrictions are not passenger-friendly, let alone cutting travel costs via such promotions. The Chief Executive Officer of MTRCL announced in high profile in this financial year that its forthcoming all-star promotions would be so unprecedented that he would give back to

passengers as much as \$670 million earned from the fare hike. As you can see, however, the concessions to passengers in the past six months were merely \$200 million. No wonder why the public are very suspicious of MTRCL's sincerity.

At present, the MTRCL's daily patronage has reached 4 million passenger trips, far exceeding the total number of trips on bus or other modes of transport. Each and every move of the MTRCL greatly affects most Hong Kong people. The MTRCL will be expanding its existing railway networks with a couple of new lines coming into service in the next 10 years. If we do not take this opportunity to seriously review the FAM, which has been in operation for five years, in order to address the concerns of the public and resolve the crux of the problem, it will have more profound and far-reaching impact on the general public.

As the FAM has been in force for five years, we feel that it is now most opportune to review and adjust the mechanism. I have proposed an amendment to the motion, in the hope of putting forward the viewpoint of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) on the fare adjustment of the MTRCL. We have made three proposals since we opine that the FAM should carry the following three components.

The first proposal is that the fare computation formula should be able to reflect public affordability. The current formula takes into account changes in the CCPI, often pushing up the figures as prices of everything would have risen in the relevant year. Although the relevant index is already divided by two under the formula, it seems to be of little help. In other words, a fare hike must come out of inflation, contrary to public expectation that the mechanism could alleviate the upward pressure on fare.

Apart from the original formula, we suggest that the authorities should consider pegging the mechanism to some data which can reflect public affordability. For instance, the rate of increase should not be higher than that of the change in Wage Index of the grassroots during the computation period, or the mechanism should be pegged to such data as the median household monthly income in order to ensure that the computation result can reflect public affordability.

Our second proposal is to set up a fare stabilization fund with its financial sources originating from the MTRCL's annual earnings, such as the sizeable profits from property developments. The MTRCL can simply allocate a fixed percentage of earnings to the fund, or inject the cash dividends receivable by the Government each year into the fund as a gesture of rebate to the people of Hong Kong, thus mitigating the impact of fare increase on passengers.

The Government, being the MTRCL's majority shareholder, owns over 70% its shares, so it absolutely has the power to make those decisions, for the common good. As a listed public utility and apart from maintaining reasonable profits, the MTRCL should also fulfil its corporate social responsibility.

Our third proposal is to implement a demerit scheme for railway incidents. We believe that the public have had a deep understanding in this regard. The people of Hong Kong take MTR for the sake of efficiency and convenience. Unfortunately, various minor and serious MTR service disruptions in recent years have treated almost every passenger to the bitter experience of being stranded at the station or trapped inside the train compartment. Public grievances have piled up over the years.

Therefore, we opine that the annual fare adjustment should always be pegged to the MTRCL's service level. The introduction of a demerit scheme for railway incidents can make the MTRCL improve its service and reduce the number of incidents, directly compensating the financial losses of the passengers and even the community as a whole. This will make the fares more reasonable and affordable.

We can make reference from overseas practices, such as Singapore's, when formulating this scheme. With effect from 2007, Singapore introduced a set of Quality of Service (QoS) Standards with which the public transport operators should comply. The local Government will assess the service performance of those public transport operators each year according to this set of standards. Non-compliance will lead to penalty with a view to monitoring their service quality.

Deputy President, the DAB has many proposals on MTR fares, facilities and services. Owing to the time constraint, I cannot go into the details here, but other Members of the DAB will raise them later.

The DAB does not oppose the original motion which suggests the submission of MTR fare adjustment rates to the Executive Council for vetting. One of the several proposals in the amendments to the original motion mentioned a buy-back of the MTRCL's shares, but it involves at least \$40 billion according to our preliminary estimation. Thorough discussion is, therefore, necessary in society to weigh the pros and cons. Since it is still not the right time to make any decision, we cannot support the proposal. Concerning the amendment to empower the Legislative Council to vet the MTRCL fare adjustment rates, we opine that this will only expose the FAM to political controversies, which is not conducive to the future operation of the MTRCL. Hence, we will not support these amendments.

Deputy President, I so submit.

MR GARY FAN (in Cantonese): Deputy President, there are three salient points in my amendment: First, to alter the existing formula of Fare Adjustment Mechanism (FAM, that is, the mechanism that allows fares to go upwards and downwards) of the MTR Corporation Limited (MTRCL) by incorporating real estate business into the formula to ensure that the MTRCL discharges its social responsibility while making reasonable profits; second, the fare adjustment rates computed under the formula should be submitted to the Legislative Council for vetting rather than the Executive Council in order to ensure that the Legislative Council, which has the people's mandate, will serve as the final gate-keeper on fare adjustment; and third, to set up an MTR fare stabilization fund and utilize the MTRCL's non-rail revenues, such as revenues from advertisements, property development, rentals of shops, and so on, to offset the pressure to increase fares. Deputy President, I will explain the thrust of these amendments in my remaining speaking time.

The existing FAM of the MTRCL has been adopted since the merger of the two railway corporations in 2 December 2007 to replace the fare autonomy of the railway corporations in the past. Fares are determined by a more objective mechanism. However, the formula is only based on three simple elements: changes in the Composite Consumer Price Index and the Nominal Wage Index (Transportation Section), as well as productivity factors. These three elements are related to the operation of the MTRCL rather than the affordability of the public.

Although we know that the existence of a mechanism is better than no mechanism or monitoring at all, this mechanism has ignored the profits of the MTRCL and the real estate income. As we all know, when a new railway was developed many years ago, the Government would grant the property development right to the railway corporation concerned so that the railway project would be constructed in the financing model of a railway plus property development. Under this model, both the Government and the railway corporation would share the risks and benefits of developing a huge railway network. However, as revealed by the facts over the past few years, the financing model of railway plus property development has in fact benefited the railway corporations and real estate developers. Let me cite an example. While the total costs of the MTR Ma On Shan Line and Tsim Sha Tsui Extension are only \$16.3 billion, the revenue from the above-station property development has far exceeded the costs. The Lake Silver at Wu Kai Sha Station is worth more than \$10 billion, while the market value of Festival City Phase One at Tai Wai depot alone is more than \$40 billion. Deputy President, this is the most important reason why I request that the real estate income be added to the FAM.

On the other hand, the MTRCL has frequently renovated the stations on the ground of enhancing the station facilities. After renovation, the equipment in the stations or facilities for people with disabilities have indeed improved. However, there is also a sharp increase in the number of shops which will bring more rentals and management fees to the MTRCL. This is also a way of making money by the MTRCL. Thus, such revenues should also be added to the FAM.

Therefore, it is reasonable and sensible to request that the profits of the MTRCL and real estate income be added to the FAM formula. It is neither time-consuming and fruitless as Mr Michael TIEN said, nor an approach that calls for long discussions. We only hope that money earned by the MTRCL from the people will be spent on the people. In the past few years, the MTRCL has earned an annual profit of more than \$10 billion, but it can still apply for fare increases under the FAM which is outdated and full of loopholes. Hence, while the MTRCL is making more money, Hong Kong people are being swallowed alive by the tiger fed by their own hands, so to speak. We have to bear a higher transport cost.

Deputy President, another salient point of my amendment is to request that the fare adjustment rates computed under the formula of the FAM be submitted to the Legislative Council for vetting. As we all know, the Executive Council is

the think tank of the Chief Executive. As for the Legislative Council, at least half of its Members are returned through direct elections in geographical constituencies. In general, the people's mandate for the Legislative Council is higher than that of the Executive Council. If the fare adjustment rates computed under the FAM is subject to the Legislative Council's vetting, I believe the MTRCL will not lightly propose a rate higher than the public's affordability. Deputy President, some colleagues such as Mrs Regina IP and Mr Michael TIEN of the New People's Party may consider that the Executive Council will suffice to serve as the final gate-keeper. But in fact, we can see that the role played by the Executive Council is limited. Why am I saying this? Because, for example, the two power companies in Hong Kong can earn profits which are linked to the return rate on fixed assets. Hence, the two power companies can continuously increase their fixed assets by means of various development projects in order to increase their profits. In fact, the Executive Council has the right to disallow the development plans of the two power companies. Once the Government has triggered the review process of these development plans, there will be a lot of room to ask the two power companies to revise the methods of calculating their assets and operating costs as well as their accounting practice so that the increase in tariff will be brought more in line with social expectations. However, as we have seen in the past, the Executive Council has never exercised this power. On the contrary, it has allowed the two power companies to increase the tariff at will. So, I think it is not enough to have the Executive Council served as the gate-keeper.

Deputy President, the third salient point of my amendment is to set up an MTR fare stabilization fund and utilize the MTRCL's non-rail revenues, such as revenues from advertisements, property development and rentals of shops to offset the pressure to increase fares. Reviewing today's amendments by Members and the records of proceedings of the Legislative Council in the past, we can note that a consensus on a MTR fare stabilization fund has been forged among various political parties in the Legislative Council. Mr Andrew CHENG, a former Legislative Council Member, had proposed an amendment demanding the setting up of a fare stabilization fund when scrutinizing the Rail Merger Bill. However, it was negated by the then Legislative Council. Mr Andrew CHENG had cited some data to prove the desirability of the fare stabilization fund. Let me share these figures with Members: Given that the MTRCL has been granted a franchise for 50 years, assuming that the average annual net profit is \$5 billion and about \$100 million to \$200 million will be set aside for accounting to the fare stabilization fund, \$5 billion to \$8 billion can be accrued in

50 years, which can become the basis for fare stabilization in an economic downturn.

At a meeting of the Bills Committee on the Rail Merger Bill, Dr Sarah LIAO, the then Secretary for the Environment, Transport and Works, also pointed out clearly that the fare stabilization fund was indeed worthy of consideration and study. Why is the Government still dragging its feet? Why do colleagues of the Legislative Council still think that the fare stabilization fund deviates from the Government's public finance management principle?

I certainly thank Mr Michael TIEN for proposing today's motion debate, allowing Honourable colleagues to speak enthusiastically and pay heed to the people's rights. But I cannot subscribe to Mr Michael TIEN's argument that the fare stabilization fund deviates from the Government's public finance management principle.

Deputy President, we understand that the MTR is a mode of public transport for many Hong Kong people who have to take it every day. Thus, whenever fares are adjusted, substantial impact will be created on Hong Kong people. We as Legislative Council Members, being elected as people's representatives, are obliged to express views on behalf of the people. We are also duty-bound to revamp some mechanism which is far from perfect, such as the FAM of the MTRCL, in the hope that we can help Hong Kong people and ensure that a reasonable formula is adopted by the MTRCL for calculation of fare adjustments.

Deputy President, I so submit.

MR KENNETH LEUNG (in Cantonese): Deputy President, the MTR Corporation Limited (MTRCL) has continuously raised its fares in recent years in accordance with the formula set by the Fare Adjustment Mechanism (FAM), sparking public discontent. There are three main reasons for the public grievances.

First of all, wages do not catch up with inflation as the soaring prices in recent years have imposed an extra burden on the people. The MTRCL's continuous fare hikes have made the living of the public even harder.

Secondly, the service provided by the MTRCL is actually a monopolistic franchise of mass transit railway system. With the rapid pace of life and transport planning design, the people of Hong Kong do not really have any true choice other than relying on MTR as their daily means of transport. According to the MTRCL's information, there are about 4.9 million passenger trips daily on average.

Thirdly, and most importantly, why do the people oppose the MTRCL's fare increase? Although the MTRCL is a publicly listed company, it provides mass transit railway service with Hong Kong Government, the single largest shareholder, holding approximately 77% of its shares. The public, therefore, has a reasonable expectation that the MTRCL should discharge its social responsibility of looking after the interests and feelings of the general public.

In the past five years, the average earnings of the MTRCL, I mean during the most recent five years, have reached \$11.9 billion. The MTRCL has also exported its technology as well as business model to the Mainland and other countries. The continuous support of government policies and Hong Kong people on a daily basis are indispensable to the success of this business model, fostering the MTRCL's development edge. In the course of developing its local railway business, the MTRCL has obtained subsidies in terms of public funds and Government lands.

Let me cite a very recent example. According to the Government's estimate, the construction cost of South Island Line was \$12.4 billion. Since the project was assessed as financially not viable, the Government then granted the property development right of the site in Wong Chuk Hang to the MTRCL in 2011 to finance the implementation of South Island Line project. The land has a Maximum Domestic Gross Floor Area (GFA) of 357 500 sq m and a Maximum Commercial GFA of 47 000 sq m.

Discounting the property appreciation after the system becomes fully operational, some conservative estimate by us at a rate of \$6,000 per square foot indicates that the MTRCL will make a profit of about \$22.9 billion from the property development alone. Of course, my calculation has yet taken into account the income from commercial leasing. According to the MTRCL's 2011 Financial Summary, transport operations only accounted for 40% of the overall revenue. Total revenue from station commercial business in addition to property rental and management businesses almost equalled the total income from

transport operations. The profit for property developments had reached \$4.9 billion. It is obvious that services and industries apart from core transport operations have brought gigantic profits to the MTRCL.

The MTRCL has already been privatized, but the basic purpose of privatizing a public utility is to enhance its competitiveness, financial flexibility and efficiency rather than focusing on maximizing its profit.

I have just said that the MTRCL made an average profit of \$11.9 billion in the last five years. With such lucrative earnings, the MTRCL still wants to adjust the fares upward. It only proves that there is basically something wrong with the current FAM formula which has failed to take into account public affordability. Meanwhile, the MTRCL has also failed to fulfil its obligation to share its corporate benefits and achievements with the community in an effective manner.

Under free market economy, we should not impose any ceiling on corporate earnings. However, we must prevent corporations providing public services from profiteering because otherwise it will affect people's livelihood. Therefore, I have proposed to fully review the current FAM of the MTRCL in my amendment. The authorities should review the reasoning behind MTRCL's fare adjustment exercise from three major perspectives as follows.

First of all, it is necessary to include the MTRCL's overall revenues into the FAM as the crucial factor, disabling any possible fare hike whenever its profit is unreasonably high. The fares may even have to be adjusted downwards according to the extent of excessive profit.

Secondly, we should give more consideration to public affordability amid rising inflation. Sheer reference to the Composite Consumer Price Index is not enough because it only reflects the average rate of inflation. In the course of review, we should also take into consideration people's wages such as the Nominal Wage Index so that an index can be formulated to fully reflect public affordability.

Thirdly, in the existing formula, we see a component of "productivity factor". According to the papers provided by the authorities, productivity factor

reflects the synergy effects of the merger of the two railway corporations such that the passengers could be rewarded with a fare reduction. However, what is meant by "productivity factor"? How is it determined? I hope that the MTRCL or the authorities could offer a brief explanation to this Council.

The "productivity factor" is a measurement which is very difficult to quantify. In the current formula, "productivity factor" is set at just 0.1%, which is most puzzling. The MTRCL's current profit levels are increasing every year, but its productivity rises by only 0.1% per year. Could it be that the productivity synergy offered by the rail merger back then was merely this 0.1%? If the synergy effect of that time was this low, why should we go to great lengths to perform the rail merger?

Furthermore, I agree that where necessary, the MTRCL's fare adjustment proposal should in the future be eventually submitted to the Executive Council for vetting and the Executive Council has the power to make final adjustment to this proposal according to the social environment and public acceptance.

However, I must stress that the initiative of requiring the Executive Council's vetting must not be lightly adopted unless necessary. The MTRCL's fare adjustment should be carried out in accordance with the well-established mechanism and should not be interfered by political considerations. Should any problems and imperfections be found with the existing mechanism, we must do our best to perfect it, and act in accordance with an objective and independent mechanism and quantifiable data. Such an attitude is most desirable for our governance and operations of public utilities. It is also an excellent tradition of Hong Kong in relation to governance or operations of public utilities.

As regards the fare stabilization fund proposed by many colleagues, as a seasoned accountant, I consider that the establishment of a fare stabilization fund runs counter to the principle of good governance for a listed company. In this regard, I also concur with the Mr Michael TIEN's point that it is a move that deviates from the Government's public finance management principle.

Apart from the original motion, Members of this Council have proposed nine amendments, in which detailed and meticulous recommendations are proposed. I subscribe to the general direction of the original motion and a

number of other amendments. The original intent of the motion is good. However, amongst the amendments (*The buzzer sounded*), I agree to some of them and oppose some of them

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

MR KENNETH LEUNG (in Cantonese): hence I have decided not to take part in the voting. Thank you, Deputy President.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, the SAR Government is now conducting a review of the fare adjustment mechanism of the MTR Corporation Limited (MTRCL) and has commenced the negotiation with the MTRCL. Mr Michael TIEN has proposed a motion on MTR fares and nine Members have proposed amendments to the motion to express their views on the fare adjustment mechanism (FAM) and put forth reform proposals, hoping that the Government will respond to these aspirations of them and the public in the review.

The fares and the fare adjustment mechanism of the MTRCL has been an issue of widespread concern in society in the past few years. During the previous Legislative Council, particularly in the Panel on Transport (the Panel), the issue was discussed a number of times. In October this year, the Panel of the new term convened a special meeting to listen to the aspirations of various deputations. The motion debate today offers us another opportunity to listen to the views of Members comprehensively.

First, let us recap the background of the FAM of the MTRCL.

In December 2007, the MTR Corporation and the Kowloon-Canton Railway Corporation merged to form the new MTRCL. Back then, the arrangement sought to adopt an objective mechanism with high transparency for regular adjustment of MTR fares, where fares might be increased or reduced according to the figures. The FAM was formulated after extensive discussions

in the community and by the Legislative Council, which had replaced the pre-merger fare autonomy of the two railway corporations.

Under the existing FAM, the fare adjustment rate for the prevailing year is determined in accordance with a direct-drive formula linked to the year-on-year percentage changes in both the Composite Consumer Price Index (CCPI) and the Nominal Wage Index (Transportation Section) (the Wage Index) in December of the previous year, as well as the productivity factor of the MTRCL. The adoption of the CCPI and the Wage Index in the formula reflects the macroeconomic environment in Hong Kong, whereas the Wage Index reflects the staff cost of the MTRCL. Hence, the FAM can be regarded as having given due regard to the economy of and the wage movements in Hong Kong.

The MTRCL reduced its fares immediately after the merger. Such reductions included: First, a minimum of 10% decrease in Octopus fares for long-haul trips; second, a minimum of 5% decrease in Octopus fares for mid-haul trips; and third, a commitment to freezing its fares in the first two years following the merger until 30 June 2009. The FAM was not introduced until 2009 after the merger and the first fare increase was implemented in June 2010. In the past three years, the fare increase for each year ranges from 2.05% to 5.4%.

According to the Operating Agreement signed between the Government and the MTRCL, the Government or the MTRCL may request a review of the FAM in the fifth year after the merger or every fifth year thereafter. It will be five years in December 2012 following the rail merger. The Administration understands the strong views of Members and the general public on the fare arrangement of the MTRCL, and it agrees that there is room for improvement under the current FAM to enable it to reflect the operation and service standard of the MTRCL. As such, we wrote to the MTRCL in August 2012 requesting a review of the FAM.

To better prepare for the review, the Government has commissioned a consultancy to study the subject in an objective and comprehensive manner. The study will examine whether and how new elements in addition to the data linked with the CCPI, the Wage Index and the productivity factor should be introduced to the FAM so as to reflect the profit level and service performance of

the MTRCL, as well as the affordability of the general public, and so on, thereby making the mechanism more comprehensive.

Moreover, to further gauge the views of the public on the FAM of the MTRCL, a formal public consultation exercise was conducted between 17 September and 18 November 2012 this year, during which 177 submissions were received. We have sent representatives to take part in discussions at certain District Councils and consulted the Panel and the Transport Advisory Committee respectively on 30 October on this issue, so as to listen to the views of Members, public organizations and members of committee.

We are now negotiating with the MTRCL. It is hoped that the review will be completed by early 2013, so that the new FAM will be applicable to the fare adjustment next year. The Government remains open-minded towards the various proposals at present. Certainly, we hope that the new adjustment mechanism adopted in future will be a transparent and simple one based on objective indicators.

Public transport is a social livelihood issue, yet the Government does not engage in direct operation but allows operators to run such services according to market principles via the MTRCL and franchise arrangement. These operators have to achieve cost-effectiveness and reasonable investment return on the one hand, and give due regard to their public responsibility on the other. To safeguard public interest, the Government will ensure that "fair fare" is achieved through various means according to the nature of different operators, so that it is fair to both passengers and the operators. We are prepared to consider the issue from a new perspective.

Deputy President, regarding the motion proposed by Mr Michael TIEN and the amendments proposed by other Members, I will first respond to a few major subjects in brief.

We understand that some in society consider it necessary to introduce the procedure of vetting by the Executive Council into the current mechanism to enable the Executive Council to play the gate-keeper's role in the annual fare adjustment of the MTRCL. The direct-drive formula of the current FAM has the merit of providing an adjustment mechanism with greater certainty and

predictability, thus facilitating the MTRCL which is a capital-intensive business in making long-term business planning effectively, thereby providing quality and reliable services to passengers.

Despite the merits of the direct-drive formula in fare adjustment, we are aware of the limitations of the current formula, particularly in its failure to reflect the service performance and profit level of the MTRCL as well as the affordability of the public. This gives people the impression that under the adjustment mechanism, the MTRCL may adjust its fares every year irrespective of the quality of its service and the profit it makes. Besides, against the background of increasing prices and wages, the fares will only be increased but not reduced. Improvement is required for the current formula. The Government hopes to bring the future formula to perfection through negotiations with the MTRCL, thereby addressing the reasonable aspiration of society. If a good approach cannot be reached after negotiations, we will seriously examine whether other more desirable fare adjustment vetting procedures will be applicable in the long run.

Some Members propose that the FAM of the MTRCL should also take account of the service performance of the MTRCL. In respect of railway safety, the Transport Department is responsible for overseeing the service performance of the MTRCL, whereas the Electrical and Mechanical Services Department (EMSD) is responsible for monitoring the safety of the railway system.

According to the Mass Transit Railway Regulations, the MTRCL should report to the EMSD any incident that occurred on any part of the entire railway premises which has a direct bearing on the safe operation of the railway. After the incident, the EMSD will conduct an investigation to ensure that the MTRCL has implemented proper follow-up and improvement measures. The EMSD will also appoint officers to conduct regular inspections to check whether the MTRCL has carried out repairs and maintenance as scheduled to ensure railway safety. The EMSD says that the operation of the MTRCL does not have any systematic problem of safety.

We agree that the most important task after the occurrence of a railway incident is to identify the cause and restore normal train services as soon as possible so that the impact on the public can be minimized. As for how to

apportion blame for the incidents or substandard service, we are open-minded about all proposals, which include the setting up of a demerit system or a system linking the service standard with the FAM as in the case of other countries. However, Members should bear in mind that any proposal should not unnecessarily exert additional pressure on front-line railway staff, so that it would not bring about any adverse impact on railway safety checks and emergency repairs in their attempt to avoid points being deducted when carrying out repair works within tight time frames.

On the other hand, given the lengthy operational hours and high utilization of the territory-wide railway network, with hundreds of thousands of systems and components operating non-stop, we should understand that it is practically impossible to achieve "zero incident". I believe the public are not trying to find fault with the MTRCL, but they only hope that the MTRCL will be passenger-oriented, maintaining quality services and proper repairs and maintenance, and enhancing various facilities constantly for the convenience of passengers.

The Government has all along required the MTRCL to give safety the highest priority. On this premise, we will examine how the MTRCL's service performance may be assessed comprehensively and objectively, and how to introduce an incentive and punishment system. We will examine this proactively with the MTRCL.

The MTRCL, like all listed companies, will return the profit obtained from operation to shareholders by means of dividend and continue to use it for business development. For the profit from underlying business for 2011, the MTRCL has distributed 40% of the profit to shareholders by dividends throughout the year. As for the profit not being distributed, it is mainly used by the MTRCL for the construction of new railway and repaying loans incurred for the construction of railways.

There is this proposal that the Government should use the dividends distributed by the MTRCL to set up a fare stabilization fund to offset the extent of fare increases imposed by the MTRCL, so as to alleviate the burden of the public. According to the Public Finance Ordinance, the dividends that the Government receives from the MTRCL form part of the Government's general revenue. The Government will give holistic consideration to the utilization of these dividends

as well as other Government's revenue. These financial resources will be used on various public services and the community at large via appropriate deployment in response to different policies and priorities, and subject to the approval of the Finance Committee of the Legislative Council.

If the Government adopts the "dedicated-funds-for-dedicated-uses" approach in using the dividends, it will affect the fundamental public finance management principle direct, which impact will be far-reaching. Moreover, if these dividends are accounted to a fare stabilization fund, it means that the fare increase of the MTRCL will be borne by taxpayers, which is unreasonable and unfair to other public transports. However, if the proposal is for the MTRCL to set aside its profit to make provision for fare stabilization, so as to lower the rate of increase in the annual fare adjustment, we think it may be considered carefully.

A number of Members suggested that the MTRCL should strictly enforce the "eight-minute notification system". The Government always requests that the MTRCL must provide safe, reliable and efficient railway services, and it should earnestly enforce the relevant notification mechanism.

Under the current mechanism, the MTRCL is required to notify the Transport Department (TD) within eight minutes of any service disruption incident that has occurred for eight minutes or is expected to last for eight minutes or more. In the past three years, from 2010 to October this year, there were 20-odd incidents on average in each month involving delays of eight minutes or more. If incidents caused by passenger action and external event are excluded, there were about 15 cases. At present, the operation of the notification mechanism is good, and the TD has all along been overseeing the operation of the monitoring mechanism and the contingency measures in a close manner, and maintaining close communication with the MTRCL.

In respect of the contingency arrangements for railway incidents, the MTRCL has implemented a series of improvement measures in areas like emergency bus deployment, passengers' information in MTR stations, dissemination of information and the management of passenger flow, with a view to minimizing the inconvenience caused by the incidents to the passengers. Recently, it has provided more instant information to passengers through its website and smart phone applications, and enhanced the broadcast and indication in railway stations to facilitate the route planning of passengers.

As for the request for the MTRCL to provide territory-wide monthly passes as well as weekly and daily passes to reduce the transport expense borne by the public, it should be noted that fares of the MTRCL are now charged according to trip distance. If it is changed to the monthly, weekly and daily pass mode, it may affect the basic fare structure as a whole of the MTRCL. It may give rise to scenarios where short-haul passengers have to subsidize long-haul passengers, and it may also affect other modes of public transport. Hence, it must be examined carefully with detailed analyses on the pros and cons of the proposal.

Deputy President, all along, the Government shares the views of the public that apart from the consideration of commercial operation, the MTRCL should give due regard to its social responsibility as a public service enterprise. It should provide safe and efficient railway services on the one hand and endeavour to alleviate the burden of the public on the other, so that the public would consider the fares fair and share the operation achievement of the MTRCL.

The Government will continue to urge the MTRCL, to proactively examine the provision of additional fare concessions of various types and pragmatic nature on top of the existing fare concessions having regard to its operation and financial performance, the market condition and passenger demand. The concessions that can be offered may include various modes of monthly pass schemes, interchange concessions, MTR Fare Saver, and the provision of additional concessions to long-haul passengers living in remote districts, thus addressing the needs of different passenger groups.

Deputy President, I so submit. After listening to the speeches of other Members, I will give a consolidated response.

Thank you.

MR LEUNG CHE-CHEUNG (in Cantonese): Deputy President, railway is the backbone of the transport policy in Hong Kong. In fact, the MTR Corporation Limited (MTRCL) has already monopolized half of the land transport services. With a continuous decline in bus ridership, buses can no longer compete with the MTRCL. Apart from rail operations, the MTRCL has continuously made profits from shopping malls and property developments above stations. The MTRCL is

in control of the daily necessities of the people, covering clothing, food, housing and transport.

The MTRCL is a listed company. A listed company stresses returns and attaches importance to profit. However, as the Government holds 76.8% of the shares of the MTRCL, the MTRCL is a quasi-government body from any perspective it is viewed. The Government should make use of its influence as the major shareholder to ensure that the MTRCL's business practices follow more closely those of public bodies, in order to help solve the livelihood problems. However, the Government has not set a clear positioning and stance and proper priorities in respect of the MTRCL; nor has it accorded top priority to the well-being of the people. The MTRCL makes a profit every year and yet increases its fares every year, but the Government can do nothing to stop it. And the Government also seems to be incapable of making the MTRCL improve its services.

Railway service failures still occur from time to time during peak hours. In the six months until mid-November this year, 13 incidents of railway service failures had occurred. In respect of platform screen doors, an accident occurred in the middle of last month at University Station when a female passenger fell onto the tracks accidentally. The DAB has fought for the installation of platform screen doors for nearly a decade but the MTRCL responded that the installation of platform screen doors for the East Rail Line would be completed together with the Shatin to Central Link only in 2018.

The monthly pass scheme for the Tung Chung Line, for which we have long lobbied, was introduced just in October, but it can only benefit passengers travelling to and from Hong Kong Island. Passengers who travel with a monthly pass to and from Kowloon or the New Territories are charged even more than the single journey fare. This has indeed made the public feel utterly helpless.

(THE PRESIDENT resumed the Chair)

In respect of train frequency, train service for the West Rail Line is still provided at an eight-minute interval during non-peak hours. The DAB has

repeatedly called for an increase in train frequency and the number of carriages, but no response has been given to us. The procurement of 20 carriages for the Light Rail in recent years has failed to catch up with the needs of a growing population in Tin Shui Wai. According to the information provided by Mr TAM Yiu-chung, the Light Rail carriages serving Tuen Mun are inadequate and residents often cannot board the train. There is also an acute shortage of feeder buses. For example, feeder buses (K73) serving Tin Shui Wai are often full after the first or second stops and passengers always cannot board such buses. Residents in the North District mainly rely on the MTR to travel to and from the urban area but not even one free feeder bus route is provided to them. Residents are thus forced to pay a fare for the feeder transport on top of the expensive railway fares.

President, all of these point to a shortage of services provided by the MTRCL. The Government is a major shareholder of the MTRCL, but what has it done to strive for benefits for the people?

The MTRCL made a huge profit of \$14.7 billion last year but it can still increase its fares under the fare adjustment mechanism that allows fares to go upwards or downwards (FAM). This shows that the MTRCL effects a fare increase not because of a loss suffered by the corporation or the cost factor, but because the FAM has given the MTRCL an imperial sword to increase fares for the sake of increasing. The increases cannot be offset by such petty favours as "Ride 10 Get 1 Free" or "50% discount for the second trip". The public will not consider the fare increase by the MTRCL reasonable because of these concessions provided by it. They will only think that the MTRCL is playing tricks to maximize its profits by all means. This will also make the public think that the Government is incompetent in governance, causing public discontent about the administration by the Government.

Under the existing FAM, fares are adjusted according to movements of the Consumer Price Index. Therefore, there is a high chance for fares to rise when inflation prevails now. For this reason, I think it is highly likely for the MTRCL to again propose a fare increase this year. But as prices are expensive in times of inflation and wages can never catch up with inflation, the MTRCL, being a quasi-government body, should not add to the burden of the people, for this would otherwise be departing from reality. The Government is incapable of

intervening in the FAM and this obviously warrants a review. Some time ago, the Government already conducted a review and consultation on the mechanism and the findings will be released early next year. I hope that the review report can target and resolve the inadequacies of the existing FAM.

With these remarks, President, I support the original motion of Mr Michael TIEN and the amendments proposed by Mr WU Chi-wai, Mr CHAN Kam-lam and Mr Kenneth LEUNG. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): President, Mr Michael TIEN said earlier when reading out the script of his speech that after his original motion had been brought to light, the MTRCL immediately said that its formula was subject to adjustment and open to discussion. Therefore, Mr Michael TIEN considered that his original motion has exerted a powerful influence by holding the MTRCL back in certain aspects.

In fact, is Mr Michael TIEN's motion really so powerful that it will bring good news to the public? I think we have to look at the contents of the motion. The most important proposals in the motion are, firstly, to maintain the existing formula and submit the fare adjustment rates computed under the formula to the Executive Council for vetting, with the Executive Council holding the power to make final adjustments and playing the role of a gate-keeper. Besides, if fares will really be increased, the Executive Council should have the power to increase or decrease the adjustment rates within a difference of 30%. It sounds quite good as there is the final gate-keeper on MTR fares and we do not have to worry anymore. But is this feasible in reality?

Let us not talk about whether the Executive Council will exercise such a power to make adjustments to the rates of increase. In fact, even if it has the power and is willing to make adjustments within a difference of 30%, and take the current fare adjustment as an example, the MTRCL has increased the fares by 5.4% while recording a profit of over \$10 billion, and even if the power as proposed by Mr Michael TIEN is exercised to bring down the rate of increase by 30%, the MTRCL can still increase its fares by some 2%. In other words, the MTRCL will still be given approval to increase its fares when it makes a sizable profit and so, is there any point to do it? It is, in fact, pointless. Because as

some Members have said earlier, the MTRCL has made huge profits and so, not only should it refrain from increasing the fares, it should actually adjust the fares downwards. Therefore, Mr Michael TIEN's proposal will not produce any particular result.

In fact, even the Secretary for Transport and Housing has said that the formula currently in use has many shortcomings, including the inability to strike a balance between the service performance or standard of the MTRCL and most importantly, public affordability. In view of this, if the existing formula is maintained, the effects and results to be achieved will be limited even if the Executive Council has the gate-keeping power and can adjust the rate of increase within a difference of 30%.

On the contrary, Mr LEE Cheuk-yan said that in order to truly address the adjustment rates of MTR fares, it will be effective only by way of subsidiary legislation subject to vetting by the Legislative Council. I think this is the most important step to take because, as the Secretary has just said, the fares should reflect the service performance or standard of the MTRCL as well as public affordability and to this end, this Council can best reflect the situation because many of our directly-elected Members do travel on MTR and often have communication and contact with the public and so, we can easily find out about public views on the service performance or standard of the MTRCL and even the affordability of the people. So I would consider it most important for us to play the role of the final gate-keeper. Hence, I think that under Mr Michael TIEN's proposal, the final outcome will be the MTRCL continuing to increase its fares without having regard to the needs of the people. This is very important.

Second, Mr Michael TIEN calls on the MTRCL to strictly enforce the "eight-minute notification system" to ensure that the MTRCL can speedily notify the public in case of incidents, adding that this may also serve as a benchmark for assessing the performance of the MTRCL and hence determining the fare adjustment rates. I think this is a bit too tortuous. The reason is that insofar as a formula is in place and an adjustment rate is set, this is still, in essence, reflecting the principle of allowing the MTRCL to increase its fares without imposing greater deterrence on it. I remember that in Singapore, a fine will be immediately imposed for any railway incident that occurred, irrespective of the scale of the incident. I think this approach will create the strongest effect. I

think it is necessary to put in place a penalty mechanism. Regrettably, the penalty mechanism that we have put in place for the MTRCL is not strong enough, and it is almost like non-existent. In order to enhance the performance of the MTRCL, I hope that the Secretary will consider establishing a penalty mechanism in order for results to be achieved.

Lastly, the third point proposed in Mr Michael TIEN's motion calls for the introduction of territory-wide monthly tickets. I think these tickets should be introduced, for they can benefit some wage earners financially. In fact, we have recently met with a group of residents in Tung Chung who are greatly dissatisfied with the monthly pass scheme currently implemented for the Tung Chung Line by the MTRCL. It is because the monthly pass for the Tung Chung Line is applicable only to stations along the Tung Chung Line, which means that passengers have to pay an additional fare if they wish to travel to places outside the Tung Chung Line. In fact, the majority of residents in Tung Chung who board a train at Tung Chung Station do not necessarily go to Hong Kong Station or other stations along the Tung Chung line, as they actually have to interchange to other lines to go to other places for work. To them, the monthly pass does not really serve its purpose and help in any way. They would consider the monthly pass useful only if they can use it when travelling on other lines. Therefore, I think this point put forward by Mr Michael TIEN is worthy of support.

I would also like to talk about "Ride 10 Get 1 Free". Many colleagues said earlier that this is a scam, and indeed, this concession is but a scam. Sometimes, during rush hours, as there are long queues waiting to redeem a free ticket under "Ride 10 Get 1 Free", some passengers have to get the free ticket at a later time but may eventually forget to do so, thus not being able to enjoy the free ride concession. It means that passengers cannot benefit from the "Ride 10 Get 1 Free" while the MTRCL can launch publicity extensively, saying that the corporation has returned benefits to the passengers. This has helped the MTRCL in its public relations work but in reality, benefits are not returned to the public. The MTRCL has even announced that this concession will cease at the end of the year and be replaced by a 10% discount on the return trip. After doing some calculations, many people have found that this is actually worse than "Ride 10 Get 1 Free".

Therefore, just as Mr Michael TIEN has said, I think the MTRCL has indeed made the cleverest calculation in terms of its public relations strategy, completely ignoring the interest of the people (*The buzzer sounded*) We, therefore, think that the Secretary should pay more attention to this.

PRESIDENT (in Cantonese): Mr LEUNG, time is up.

IR DR LO WAI-KWOK (in Cantonese): President, the fare adjustment by the MTR Corporation Limited (MTRCL) is indeed a very important issue pertaining to the people's livelihood, because the MTR is a major means of public transport used by many people to go to work and to school and in their lives every day. In discussing this issue, the Legislative Council needs to take an appropriate and balanced perspective, fully taking into account the interests of stakeholders. Apart from safeguarding the interest of the general public as passengers of the MTRCL, consideration should also be given to the interest of the many small shareholders of the MTRCL as investors. Otherwise, it would be easy for bias to arise and this issue to become politicized.

In fact, the existing Fare Adjustment Mechanism (FAM) of the MTRCL does not come by easily. It is a mechanism established on a consensus reached after extensive discussions in society and the Legislative Council. Before the merger of the MTRCL and the Kowloon-Canton Railway Corporation in December 2007, the MTRCL had enjoyed fare autonomy. In the course of the discussion on the merger, the MTRCL, at the request of the Government, agreed to adopt a relatively objective and transparent formula-based FAM for determining fare adjustment rates in future. This has hitherto replaced the fare autonomy of the MTRCL. The Government then signed the legally-binding Operating Agreement (OA) with the MTRCL accordingly, whereby the MTRCL undertook to provide the Government with certifications by two independent experts certifying that the fare adjustments are in compliance with the FAM and to notify the Panel on Transport of the Legislative Council and the Transport Advisory Committee before implementing the new fares.

The formula adopted under the FAM is based on statistics openly publicized and announced by the Government, which include changes in the Composite Consumer Price Index and the Nominal Wage Index (Transportation Section), as well as a productivity factor with a predetermined value. This

shows that the FAM is a fairly objective, transparent and clear mechanism, and it is also a product of social consensus. Of course, this does not mean that the existing FAM is perfect. The specific formula for computing the adjustment rates can be and should be subject to adjustment regularly. In fact, under the OA signed between the Government and the MTRCL, either party can request a review of the FAM at an interval of five years. As far as I understand it, the Government just completed public consultation in late October and the review is expected to complete early next year. I very much agree that this opportunity should be seized to comprehensively review the existing FAM. We should consider, among other things, appropriately including quantifiable values or indicators in the formula in order for some suitable factors to be incorporated for consideration, such as inflation rates, public affordability and the overall profit level of the MTRCL. This will enable the mechanism to better keep tabs on and reflect the current situation of the people's livelihood and economic development.

The original motion proposes to maintain the existing formula and submit the fare adjustment rates computed under the formula to the Executive Council for vetting, with the Executive Council being given the power to make final adjustments. This, I think, has deviated from the objective of the FAM. We should give due regard to the openly recognized mechanism, in order not to turn the process of fare determination into a political dispute year after year.

Some colleagues have proposed in their amendments that the Government, being the major shareholder of the MTRCL, can actually take a lot of actions, such as setting up an MTR fare stabilization fund with MTRCL's non-rail revenues. However, even though the Government is the major shareholder of the MTRCL, it does not mean that it can arbitrarily change the direction of operation of the MTRCL. The MTRCL is, after all, a listed company. While it is tasked to provide safe, reliable, quality and affordable services to the public, it also has to operate according to the principles of commercial operation. The Government, though being the major shareholder, cannot neglect the interest of other small shareholders. Also, it must treat other small shareholders fairly, or else criticisms may be aroused and legal proceedings may even be resulted.

A Member has proposed that the Government should allocate the dividend income received from the MTRCL to set up a fare stabilization fund. However, we must not lose sight of the fact that this would depart from the Government's principles of public finance management.

Another Member has proposed that the Government, being the major shareholder of the MTRCL, should buy back all the remaining 23% of the shares of the MTRCL. This proposal is neither an effective solution to the problem nor a consensus reached in society. On 21 November, this Council thoroughly debated a motion calling on the Government to buy back the shares of The Link. Members should still recall it quite clearly. The arguments advanced on that day can actually apply to this proposal of buying back all the shares of the MTRCL.

President, I so submit.

MR TONY TSE (in Cantonese): President, the MTRCL has performed remarkably well internationally, and in terms of its service standard and overall management, the MTRCL is among the top compared to other international cities. As railway is the backbone of the mass transport system in Hong Kong and the MTRCL is a public utility, the operation of the MTRCL has a direct bearing on the public. What is more, the MTRCL is currently operating with the Government's policies skewed towards it to a certain extent and has monopolized the railway services in Hong Kong. For these reasons, many members of the public and I hope that the MTRCL, in determining its fares, can fully discharge its corporate social responsibilities, rather than seeking to maximize the rate of fare increase.

As the current FAM of the MTRCL has not taken into account public affordability and the overall profit level of the MTRCL, I support that the existing mechanism should be revised. But how should this mechanism be revised? Should the Administration maintain the existing mechanism but empower the Executive Council to control the rate of increase in MTR fares as suggested by Mr Michael TIEN?

I think empowering the Executive Council to perform the gate-keeping role is an option. But what criteria should the Executive Council adopt in guarding the gate? I think public affordability and MTRCL's overall profit level should be the major factors for consideration. Besides, I also propose that the rate of increase should be capped. Certainly, these changes and proposals must obtain the consent and approval of the MTRCL and its small shareholders.

President, I think the Government should improve the existing FAM and the formula for computing the fares, irrespective of whether or not the Executive Council will have the power to serve as the final gate-keeper. As a number of Members have said, such factors as public affordability, the MTRCL's profit level, its revenues from property development and the overall performance of railway services are not factored into the formula currently used for computing the overall fare adjustment rates. The revenues from property development are led by rail services, and they are inextricably linked with each other. Without rail services, the MTRCL's revenues from property development are set to be greatly affected. Therefore, it is only reasonable to include the revenues from property development as a factor for consideration in determining the MTR fares. However, I think it will take quite a long time to reach a consensus on the revision of the formula, a point that should not be neglected. Besides, I think the MTRCL should provide more fare concessions for passengers who live in remote districts, in order to provide subsidies and incentives for them to travel by MTR while reflecting the longer time that they need to spend on daily commuting.

President, on the proposal of setting up a fare stabilization fund, as there is little chance for a consensus to be reached within a short time on the adjustment of the existing formula for computing the fares, I support that the Government should, before there is a new mechanism, allocate part of the dividend income from the MTRCL to provide short-term fare subsidies for a specified period of time, thereby easing the burden of transport expenses on the public. Regarding the question of whether a fare stabilization fund should be ultimately set up, as this involves long-term measures concerning government revenue and the use of public coffers, I think it should be implemented only after a consensus is reached among all sectors of the community.

Although the MTRCL has, from time to time, allocated part of its profit to provide various types of fare concessions, I think it is still better to reduce the fares direct, so as to benefit all passengers and alleviate the burden of transport expenses on them. With regard to these fare concession and promotion schemes offered by the MTRCL, it is inevitable that the MTRCL is suspected to be offering these schemes in the hope that more people will be attracted to take the MTR and hence boosting its business turnover, rather than trying to ease the burden of transport expenses on passengers, the first and foremost objective it should otherwise pursue.

President, the Government received a dividend income of as much as \$3.37 billion from the MTRCL in 2012-2013. I hope that the Government will actively consider allocating part of its dividend income from the MTRCL to providing short-term fare subsidies, such that the burden of transport expenses on the public can be alleviated before a new FAM is formulated and implemented.

President, I so submit.

MR WONG KWOK-HING (in Cantonese): President, with regard to the amendment proposed by Mr TANG Ka-piu on behalf of the FTU, I will elaborate further the proposals under items (b) and (g) of the seven proposals put forward in his amendment.

The proposal under item (b) in Mr TANG Ka-piu's amendment calls on the Government to expeditiously study and implement the formula of a new FAM. The so-called "direct-drive" fare adjustment formula, that is, the FAM, is proved to have fallen far short of public expectations. Therefore, we do not agree that the original formula be maintained, as suggested in the original motion and the amendments proposed by other Members.

President, the so-called "direct-drive" fare adjustment formula, or the FAM, contains a number of rather unreasonable elements. First, this mechanism takes into account changes in the Nominal Wage Index (Transportation Section). There is a great difference between this Index and the income of wage earners in Hong Kong. It cannot reflect the actual wage levels; nor can it reflect the plights of the general public whose wages have been eroded by inflation. Therefore, the authorities must re-examine this element.

Second, the rates of increase in MTR fares computed under the FAM have been extremely unreasonable over the years. The growth in the profit of the MTRCL has run seriously out of tune with the rate of increase in its fares over the years. Take 2009 as an example. Although the MTRCL recorded a growth of 16.4% in its net profit after depreciation, amortization, interest and taxes, its fares were still adjusted upwards by 2.05%. Even in 2010 when there was a growth of 26.3% in the net profit, the fares were still increased by 2.2%; and in 2011, a

growth of 22% was recorded in its net profit but the fares were increased by 5.4%. In retrospect, over the past three years, although the accumulated net profit of the MTRCL has increased by as much as 64.7%, the fares have also recorded an accumulated increase of 9.65%, which is almost a double-digit growth. This has precisely reflected that the greater the profit recorded, the higher the rate of increase in fares, which is paradoxical.

Third, the so-called "productivity factor" which is factored into the mechanism is deceptive. Why? According to the annual reports of the MTRCL, the MTRCL has five major sources of revenue: First, net profit on transport operations; second, net profit on station commercial business; third, net profit on the operation of railway subsidiaries outside Hong Kong; fourth, net profit on property, rental and management businesses; and fifth, net profit on property development by the MTRCL. There are five major sources of income in total. But when the MTRCL calculates the fare adjustment rate, only the net profit on transport operations is factored into the so-called "productivity factor", whereas the other sources of income are excluded. How serious is this unreasonable approach of disregarding other income sources? In 2011 (last year), for example, transport operations recorded a net profit of \$6.1 billion, whereas the other four major income sources recorded a net profit totalling \$60.934 billion and these revenues were not factored into the mechanism for computing the fare levels. Another example is 2010 when transport operations recorded a net profit of \$5.8 billion, whereas the other four major sources of income recorded a net profit totalling \$9.234 billion.

So, from these statistics we can see that the so-called "productivity factor" entirely plays a decisive role in determining the rate of increase in MTR fares. As the FAM takes into account only the profit on transport operations but not profit generated from other operations, the MTRCL can, therefore, demand a significant increase in its fares.

Second, I wish to add some points with regard to Mr TANG Ka-piu's proposal under item (g) of his amendment. Given that passengers cannot get any compensation for injuries sustained while they are travelling on a train within the precincts of MTR, it is necessary to improve this unreasonable situation in the review of the MTR FAM. Railway has a huge patronage now. The ridership was more than 1.2 billion passenger trips in 2008 and further increased to more

than 1.3 billion passenger trips last year. But the number of reported railway incidents has also increased considerably from 1 514 cases in 2008 to 1 769 cases in 2011. However, no compensation is provided to railway passengers injured whether for subjective or objective reasons. The Government has said that the Traffic Accident Victims Assistance Scheme does not cover passengers involved in railway accidents and that immediate assistance will be provided only for accidents involving vehicles on road irrespective of the reason of the accident. Railway passengers who sustained injuries will not get any assistance or compensation, and they have to initiate civil proceedings if they wish to seek compensation. Therefore, compensation is not provided to these passengers. I hope that the mechanism will include this (*The buzzer sounded*)

PRESIDENT (in Cantonese): Mr WONG, time is up.

DR CHIANG LAI-WAN (in Cantonese): President, the topic of discussion today is "Executive Council as gate-keeper for MTR fares". Mr Michael TIEN's motion is actually very simple as it seeks to point out that the Government is duty-bound to properly guard the gate for the public in respect of MTR fares.

Clothing, food, housing and transport are the four major daily necessities of the people. Members of the public generally face the biggest problem in housing and transport. In respect of housing, while the Government has explored all possible ways to introduce a myriad of measures, it is already quite good if the problem can be slightly ameliorated within a short time as Hong Kong is a small place with a large population. But transport is an entirely different matter, because the Government is the major shareholder of the MTR Corporation Limited (MTRCL), and so long as the Government has the determination, it should be capable of producing instant results.

To begin with, I wish to talk about the MTRCL. The MTRCL has introduced some concessions in recent years but these concessions have given people the impression that the MTRCL is perfunctory and insincere. For instance, regarding the Monthly Pass scheme, it is stated in the terms and conditions that this promotion can end at any time without prior notice, and the "Ride 10 Get 1 Free" scheme will end on the 30th of this month. Other

concessions, such as the "Bonus Points Scheme" or the promotion scheme that offers a single-journey souvenir ticket to passengers for every \$400 spending on MTR fares are not at all useful, because I think the wage earners care about the fares, not souvenir tickets. Regarding the "MTR Fare Savers" scheme under which a passenger can place an Adult Octopus card over the reader to enjoy a discount of a dollar or two, as there are only 31 "Fare Savers" in the territory, only a small number of people can benefit from the scheme. Some people even said that they have never seen this machine before.

On the part of the Government, some assistance has been provided by the Government in respect of transport. For example, we in the DAB have all along hoped that the Government will introduce a transport subsidy as a work incentive, because we hold that the Government should put resources on the most needy people. During the past year, the Government spent some \$200 million in this respect. This is, after all, better than nothing. This spending of some \$200 million seems to be a large sum of money but the Government, as the major shareholder of the MTRCL, receives a net profit of over \$10 billion in its accounts annually. In comparison, this \$200 million-spending is but a drop in the bucket. Transport is indeed an essential part of the people's daily lives, and it is just like basic foodstuff to the people. The Government is absolutely duty-bound to control the fares.

In many places elsewhere, disregarding whether capitalism or socialism is practiced there, a people-based approach is often adopted by pitching the fares of the underground railway at low levels, and many of these railways are operated on the mode of public-private partnership. Take the Beijing Subway as an example. Except for the Airport Express Line, a uniform fare system is adopted for all the other stations. Passengers can travel to any station on all railway lines at a uniform fare of \$2 only. As regards Metro Taipei, the Taipei Government holds some 70% of its shares, whereas various business enterprises hold the remaining some 20%. But their fares range from NT\$20 to NT\$55, which are equivalent to HK\$4 to HK\$16, and passengers can even enjoy a 20% discount by using the EasyCard, which is similar to Hong Kong's Octopus Card. In some countries, the governments do not seek to make a profit from the fare revenues and better still, allocations are made out of the treasury to offer certain subsidies to the people, because they know very well that transport fares are a daily necessity of the people.

From these examples we can see that the Government should not take the revenue from transport fares as a means to make money. There are many ways for the Government to generate more revenue to the treasury, but it should not dig into the pockets of the ordinary people. So, it is not the case that the public cannot afford an increase of a few dollars in fares as proposed by the MTRCL, but they are angry and feel very upset in their hearts. The MTRCL has made such a huge profit and what is more, the Government is its major shareholder. Why does it keep on digging into the pockets of the public and is it going to stop only when the people are left penniless? Should the people then turn to the Government for Comprehensive Social Security Assistance? The Government has vowed to narrow the wealth gap. Then it is now time the Government practically did something and showed it to the people.

The MTRCL is a listed company. I agree that a listed company must be responsible to its small shareholders but the MTRCL, being a public utility at the same time, has unshirkable responsibilities towards society. President, the Government has always encouraged enterprises to fulfil their corporate responsibilities. The Government, being the major shareholder of the MTRCL, is all the more duty-bound to do so. It should play a leading role, taking the lead to alleviate the heavy burden on the people by returning part of its income from the MTRCL to the people. In this connection, we in the DAB have been calling on the Government to set up a MTR fare stabilization fund. For example, a certain percentage of the MTRCL's revenues from the sale of property and the Government's annual dividend income received from the MTRCL can be injected into the fund, so that the MTRCL can set the fares at a level affordable to the public. Only in this way can assistance be truly provided to the public to ease their pressure in living.

I so submit. Thank you.

MS STARRY LEE (in Cantonese): President, the MTRCL's railway lines have kept on expanding with its market share growing continuously from 42.7% in 2007 when the merger took place to last year's 45.4%. We all know the merits of travelling by MTR. With high train frequency and punctuality, patronage by commuters has been rising all the time. Added to this is a multiplying number of visitors under the Individual Visit Scheme. Members who travel by MTR will know that every train is almost crammed full of passengers at any time of the

day, whether in the morning or afternoon or at night and even during non-peak hours after the end of the meeting of the Legislative Council between 10 pm and 11 pm. As a number of railway lines currently under construction will be completed one and after, domination by the MTRCL is set to become inevitable.

President, Hong Kong is a place with scarcity of land but a huge population, and it is reasonable and sensible for railway to be developed as a major mass carrier in the public transport system. But the expansion and development of railway does not mean turning railway into a hegemony. The greater the powers, the greater the responsibilities. The MTR can stand in the leading position of the mass carrier system nowadays mainly because it has benefited from the Government's policy to develop railway as a major means of public transport and from the revenues generated from property development. As the Government is the major shareholder of the MTRCL, the public certainly expect the MTRCL to be more receptive to public opinions in determining its fares in response to public aspirations, while attaching greater importance to its corporate responsibilities and giving more consideration to public affordability.

Regrettably, the MTRCL's FAM alone has aroused extensive public accusations. Colleagues have already made a lot of criticisms earlier on, and I do not wish to dwell on them any further. Simply put, the greater the profit made by the MTRCL, the more the fares are increased. On behalf of the DAB, Mr CHAN Kam-lam already talked about the direction for improving the FAM in the hope that the Government can seriously consider it. In a nutshell, a fare mechanism that pays no regard to public affordability is outdated. The Government should heed good advice and set up a fare stabilization fund to ease the burden of the people in living. Apart from calling for a review of the fare mechanism, I also wish to take this opportunity today to highlight a number of demands that the public have been striving for. Here, I strongly urge the Government and the MTRCL to readily accept good advice and answer the aspirations of the people.

First, immediately rectifying some unreasonable fares. I have often received complaints from the public that the fare for travelling from Sheung Shui to Lo Wu is on the high side and has departed from reality. The tie between Hong Kong and the Mainland is becoming closer and closer whether economically or in respect of the living or the work of the people. With some

40 000 people travelling between these two places for work each year, maintaining the current fares for cross-boundary railway service without making any changes is definitely not conducive to the dealings between the people of the two places and the trade between them. This is also most unfair to people who travel between the two places for schooling and for work every day.

Second, fully implementing a monthly ticket scheme for all the lines covering long-haul and short-haul journeys and also cross-boundary railway lines. People who have taken underground railway while travelling abroad must have noticed that the monthly ticket arrangement is very common overseas, except that it is not found in Hong Kong. As many Members said earlier, following a substantial increase in its fares some time ago, the MTRCL has introduced some concessions to ease public anger, which include three monthly pass schemes and the promotion of "Ride 10 Get 1 Free". These concessions show that the MTRCL has really made the cleverest calculation by imposing various restrictions to limit the number of passengers who can benefit from these schemes. For example, regarding the Monthly Pass scheme for the East Rail Line, the price of the monthly pass, which is \$550, is excessively high, and passengers who travel with a monthly pass for a short-haul journey may have to pay even more than the single-journey fare using an Octopus Card. Likewise, under the "Ride 10 Get 1 Free" scheme, passengers can enjoy the benefit only by accumulating 10 rides on MTR from Monday to Friday, meaning that wage earners who work on shifts cannot benefit from it. Other than these most calculating concessions, I must say something about the "MTR Fare Savers" scheme, which is most enraging indeed. I wonder if Members have noticed that only a very small number of these "Fare Savers" are provided. No "Fare Saver" will be provided by the MTRCL within 200 m of a MTR station because it has made the cleverest calculation, knowing that the public will surely take MTR when they are within 200 m of a MTR station, so why should it be set up? This has precisely shown the MTRCL's attitude of being calculating and seeking to maximize its profit. We understand that the MTRCL is accountable to its small shareholders. Having said that, the MTRCL has recorded a profit of \$14.7 billion and amassed assets with a value of close to \$200 billion. I urge the MTRCL not to be calculating over these petty favours and not to become the enemy of the people.

Third, abandoning the requirement of installing only one lift in a station. Fares aside, the public have put forward a lot of views on facilities requiring

improvement in MTR stations. Frankly speaking, it is not the case the MTRCL has turned a blind eye to the problem, just that it has responded at a snail's pace. The installation of lifts inside MTR stations has been a strong aspiration expressed by residents in various districts. Regrettably, the MTRCL's policy is rigid, insisting that one lift be installed in each station first and that a decision will be made on the other demands after conducting an assessment. It may probably take eight or 10 years to complete an assessment. As you know, President, we have spent a great deal of time lobbying for the installation of a lift at Exit A of Mei Foo Station. Under this policy, even though we wish to strive for an additional lift, we are still unable to make a promise to the public. In fact, we all understand that many lift users are elders or people in need. Why should they be made to walk all the way from one end to the other end of the station in order to use the lift? Is this policy not too backward and cruel? Why is it that MTRCL's policies cannot be more human and responsive to the phenomenon of population ageing? The MTRCL should at least provide one lift each at both ends of the station, in order to make it easier for the needy in accessing MTR stations.

Fourth, building a better railway network. This should be the duty of the Administration. There are still many railway extensions that residents have been persistently fighting for, such as the North Island Line, Siu Sai Wan Extension, South Island Line (West) and the Coastal Railway between Tuen Mun and Tsuen Wan. The public have been waiting for a very long time. They hope that the bottleneck problem that arises in their respective district or that caused by cross-district traffic can be resolved expeditiously to facilitate the further development of the community. I hope that the Government can show us its determination and consult members of the local communities on the railway alignment and stations, so as to facilitate the early development of these railway lines and avoid making the mistake of the Shatin to Central Link and South Island Line again.

President, the public have indeed expressed too many aspirations, and I do not have the time to explain them in detail. In brief, I hope that the MTRCL will seize the last opportunity to ease public discontent and implement these proposals early.

President, I so submit.

PRESIDENT (in Cantonese): As it is certainly impossible to complete all the items on the Agenda before midnight, I will suspend the meeting at around 10 pm.

MR CHEUNG KWOK-CHE (in Cantonese): President, we are discussing MTR fares today. I think the Panel on Transport is going to discuss the fare increase application by the Kowloon Motor Bus Company (1933) Limited in the next two weeks, and public utilities such as Towngas, power companies, bus companies and the MTR will line up to apply for an increase in their fares or charges one by one every year. Perhaps we should first make clear the meaning of the word "public" as in these public utilities. I think "public" at least carries two meanings. First, it means that these facilities are used by a majority of people in society, such as public transport like buses and MTR of which the main users are the grass-roots people. In fact, 90% of the people of Hong Kong rely on public transport. The second meaning of "public" is that this is the Government's responsibility. Since these services will have a bearing on the everyday life of the majority public, it is the duty of the Government to provide, monitor, develop and improve these services, in order that the public can use these services economically, safely and conveniently, thereby enabling the people to enjoy the fruits of social development in their living.

I think Hong Kong, with 90% of the people using public transport, should be among the top in the world. We should all agree that Hong Kong's well-developed transport network, especially buses and the MTR, is outstanding. However, these two transport systems are different from those in other countries or places in that the public transport services in these countries or places will, in fact, suffer a loss without government subsidies. But in Hong Kong, not only can the bus and MTR operators definitely make a profit. What is more, they can make immensely huge profits. Take the MTRCL under discussion as an example. Despite the frequent occurrence of disruptions and accidents and a lot of complaints from the people, the public have no choice but to obediently place their Octopus Cards against the reader to ride on the MTR. Why can the MTRCL be like this? Because the people have no alternative and worse still, these public utilities are mostly related to real estate hegemony. At present, public transport services, Towngas and power companies are all controlled by major property developers, and the MTRCL is exactly a major property developer itself. When they are surrounded by plutocrats and under a high degree of monopolization, there is basically no genuine competition for these public utilities. Normally, the public should be able to look to the Government for

intervention and taking up the cudgels for the people to address these unfair phenomena in society. But as Mr Frederick FUNG's amendment has told us, the MTRCL, in which the Hong Kong Government owns about 76% equity interest, made a net profit of \$14,716 million in 2001, and that the dividends received by the Government amounted to \$3.3 billion. It turns out that a very large part of the money paid by the public for the expensive MTR fares has gone into the Government's pocket.

Even if we look at this from the principle of "small government, big market", there is now basically no market to speak of in Hong Kong, as there is only monopolization. If we make reference to overseas experience, even in some developed countries with conditions that are similar to those in Hong Kong, we will find that the government there does not only play the role of a "night-watcher", but also takes up responsibilities in many aspects to give play to the functions of government. In important aspects involving people's livelihood, it is all the more necessary for the Government to play a more active role. It must not beat a retreat, and it must provide financial assistance. Put it more precisely, most of the Government's financial resources should be allocated to areas like medical and health care, public facilities, social security and welfare services, and the urban public transport system is also one of the aspects into which government resources must be injected. Public transport is public goods, and it absolutely should not become a tool for businessmen to reap profits.

President, the original motion of Mr Michael TIEN proposes that the existing mechanism that allows fares to go upwards and downwards should be maintained and that the fare adjustment rates should be submitted to the Executive Council for vetting. I do not know if Mr TIEN is intentionally or unintentionally using this proposal as a hoax to serve an ulterior purpose. In the first place, everyone knows that the Executive Council is a place dominated by the "pro-government camp" and people with vested interests. Submitting the fare increase to the Executive Council for vetting is like sending sheep to a pack of wolves. Besides, I feel very disappointed that Mr TIEN would prefer vetting by the Executive Council than proposing monitoring by the Legislative Council, a forum where there is still some mandate from the people to speak of. Forgive me if I am being too negative in thinking. Our feeling is that he seems to be taking advantage of the opportunity to help the MTRCL bypass monitoring by the Legislative Council.

President, the Government adopted the dual track system for the transport subsidy policy by allowing applications to be made on the basis of households or individuals, with a view to encouraging more applications. However, what the people want most is not a transport subsidy, but a direct cut in their transport expenses to alleviate their burden. Therefore, I agree that "Overall Fare Adjustment Rate" be changed to "Ceiling of Overall Fare Adjustment Rate", that the Train Service Disruption Factor be added, and that the fares be subject to the Legislative Council's scrutiny and approval. Meanwhile, legislative amendments should be made to require the MTRCL to allocate a certain proportion of its returns from property development for setting up a rail fare stabilization fund.

President, I so submit.

MR POON SIU-PING (in Cantonese): President, at the end of October this year, the Panel on Transport of this Council held a special meeting on the review of the railway fare mechanism in Hong Kong. At the meeting, Members as well as deputations attending the meeting to express their views were dissatisfied with the formula currently used for calculating railway fares. Their views were very clear. The views expressed on that day are also reflected in the original motion and the many amendments today.

It is the transport policy of Hong Kong that railway is developed as the main axis of the mass carrier system. The Government has all along been committed to promoting the development of railway. From route planning, land grant, financing to construction, the Government has played a vitally important role. Despite it being a listed company, the MTRCL is tasked to serve the public by its fundamental nature, and it is a social asset. In this connection, when we discuss fare adjustments by the MTRCL, a balance must be struck among such factors as the effective operation of the railway, public affordability, and so on. On the one hand, the fare adjustment mechanism must have a sufficient reward and penalty system to facilitate the development of railway and improvement of service. On the other hand, consideration must be given to the fact that railway is meant to serve the general public and the fare levels, therefore, cannot depart from the affordability of the grass-roots people. I will put forward views on the railway fare mechanism under these principles.

Under the existing fare adjustment mechanism of the MTRCL, the fare adjustment rate is calculated using this formula: $0.5 \times \text{Change in Composite Consumer Price Index} + 0.5 \times \text{Nominal Wage Index (Transportation Section)} - \text{Productivity Factor}$. Based on this formula, in the three years of 2010, 2011 and 2012, the railway corporation increased its fares every year while its profit continued to increase in parallel. In 2009, the corporation made a profit of \$9.6 billion; in 2010, a profit exceeding \$12 billion was recorded, and in 2011, the profit was even in excess of \$14.7 billion. When prices are expensive and the grass-roots people are living in straitened circumstances, the MTRCL, which has made sizable profits, still increased its fares as allowed under the requirements of the fare adjustment mechanism. This obviously cannot command support in the community. It is imperative that the fare adjustment mechanism be improved in the interest of members of the general public.

Here, I would put forward a few proposals on the improvement of the fare adjustment mechanism. The Federation of Hong Kong and Kowloon Labour Unions, to which I belong, proposed in October when expressing views in the Legislative Council that the weighting of the underlying Composite Consumer Price Index should be increased in the existing formula, in order to reflect the objective that railway is intended to serve the public. Moreover, as the railway corporation has generated huge revenues from non-rail operations, such as advertisements, property development and shop rental, such revenues must be reflected in the computation of the fare adjustment rates.

I support that certain reward and penalty provisions should be included in the fare adjustment mechanism. In considering a fare increase by the railway corporation, the frequency of incidents involving train service should be included as a factor for consideration, in order to encourage the railway corporation to improve its management. But I must stress that the railway corporation must not shift the blame of railway incidents onto its front-line staff and use this as a pretext to evade problems.

President, in this motion today, a focus of discussion is who should be the gate-keeper for railway fare adjustments. Apart from the Executive Council, does the Legislative Council have the power to examine and approve the increase of railway fares? I understand that views are diverse in society. Some people are concerned that the Legislative Council invariably objects to all increases and therefore do not agree that the Legislative Council be given the power of scrutiny

and approval. There are also views that scrutiny and approval by the Legislative Council may put an end to unreasonable fare increases sought by the railway corporation. I tend to support the latter view. I believe if the fare increase sought are tabled in the form of subsidiary legislation with the Legislative Council having the power to scrutinize and approve the adjustments under the negative vetting procedure, a balance will be effectively struck among different views.

I so submit.

DR PRISCILLA LEUNG (in Cantonese): President, the MTR Corporation Limited (MTRCL) set up after the merger between the Kowloon-Canton Railway and the then MTR Corporation has actually grown up together with Hong Kong people. Although I was not yet a Member of the Legislative Council back in those years when the Government lobbied support from the Legislative Council for the Rail Merger Bill, I still remember clearly that the Government had undertaken that the merger would create synergy and hence bring down the fares. But from what we can see now, this promise obviously has not been fulfilled, and the Government has failed to live up to public expectations.

Public enterprises like the MTRCL of which the Government is the major shareholder should indeed ride out the storm together with the people, but the MTRCL has continued to increase its fares year after year. The MTRCL recorded a growth of as much as 20% in its net profit last year, making an immensely huge profit of \$14.7 billion and yet, it still announced a substantial fare increase of 5.4%, which is expected to generate an additional revenue of \$600 million. This is the third year in a row that the MTRCL has activated the FAM. The adjustment rate this year is far higher than those in the past two years, which were 2.05% and 2.2% respectively.

The MTRCL has implemented the Public Transport Fare Concession Scheme for the Elderly and Eligible Persons with Disabilities but in spite of this, considering that the MTR has a daily patronage of nearly 4 million passenger trips, the other passengers, especially the wage earners and students, cannot enjoy any benefit. Obviously, this fare increase will only place a heavier burden on passengers.

In fact, during the five years since the FAM was implemented for public transport fares, many discussions have been conducted, and it is found that the fares have only been increased rather than decreased, thus causing many complaints from the people. The original intention of this mechanism is to provide a standard formula in accordance with the law for major public transport operators to determine fare adjustments, thereby minimizing disputes while ensuring that the adjustment rates can follow more closely the changes in economic conditions. However, most people have said that the existing mechanism has big loopholes, and it is true that some operators have only increased their fares rather than reducing them and they have only taken into consideration such factors as the prevailing inflation rate, and so on.

Owing to various circumstances, wages and productivity in Hong Kong have been rising consistently. Added to this is that after the financial tsunami in 2008, Hong Kong has faced an ongoing low interest environment and continued depreciation of the US dollar, and these complicated circumstances have continuously aggravated inflation year after year. This has resulted in persistent rise in fares under the FAM. No wonder the public are calling for a review.

Although the Government has said that it would review the implementation of the mechanism jointly with the MTRCL by, among other things, commissioning a consultancy study on the inclusion of the overall service performance and public affordability in the formula for computing the fare adjustment rates, as it takes time to conduct a review, this is a solution too distant for tackling the immediate problem. Therefore, before further improvement is made to the existing FAM, I once again call on the MTRCL to go by its corporate conscience and fulfil its social responsibility by refraining from maximizing its profit all the time. I very much hope the MTRCL will understand that we really act out of goodwill in putting forward these demands and advice to it.

There is actually a very important reason why the public did not oppose the FAM back then. It is because they trusted that the operators would not abuse the mechanism and would set public transport fares at reasonable levels. As such, the consortiums should all the more refrain from abusing the public trust. Trust, once lost, can hardly be restored. Therefore, if this mechanism became a mechanism that enables fares to increase regularly, I think it would only be turned into a tool to fleece the people.

The MTRCL has always said that its current operation is unstable, and I have heard a lot of explanations that if fares are not increased, many new policies and services may probably have to be discontinued. But the MTRCL has ignored a very important point and that is, the trust placed in it by Hong Kong people, and the fact that the MTRCL has continuously enjoyed the right to develop property above stations along the rail lines. Originally, one of the purposes is to use revenues from property developments to subsidize the expenditure on the operation of public transport which is a necessity of the people, thereby reducing the pressure for fare increases. Of the over \$10 billion profit recorded by the MTRCL last year, almost 50% is generated from property development.

The MTRCL has always said that the revenues from property development are unstable and so, they cannot offset the expenditure incurred by the provision of new services. I think fares are increased this year also for this same reason. But the MTRCL should think about this. Hong Kong people simply will not accept this reason. In Hong Kong where land is exorbitantly expensive, how will people agree that the MTRCL's revenues are unstable and therefore a substantial fare increase is necessary?

Frankly speaking, as the public have placed their trust in the MTRCL, they certainly expect the MTRCL to improve its services. Take Ho Man Tin Station as an example. I had taken part in the discussion of the Kowloon City District Council for a long time but the relocation of the station eventually could not be achieved, meaning that its location will still be very far away from the most needy public housing tenants.

Moreover, several MTR station exits are under construction in Whampoa Garden. We have all along hoped that the MTRCL can provide reasonable compensation to households on the lower floors of the buildings affected by the construction works and noise nuisance particularly by assisting families with children or elderly members to retrofit facilities to mitigate the noise problem. As regards the shop tenants, I do not think I need to do any more explaining. They have been greatly affected during the construction works. Mei Foo Station Exit A is an example, and some colleagues have mentioned this point earlier on.

Similar examples abound. For instance, there is a very long walkway at the new exit of Lai Chi Kok Station, but no travelator is provided. Yet, other exits with shorter walkways are provided with travelators, and the design is very strange. For cases like these, is it necessary to make improvement?

I hope that the MTRCL can hear the criticisms made by colleagues and adopt a reverse mentality by considering things more from the perspective of the public. My advice to the MTRCL is that it must not follow the tariff increase by the two power companies. It must exercise self-restraint and must not abuse the trust placed in it by the people. If the MTRCL continues to reap colossal profit using such short-sighted approach of killing the goose for its golden eggs, I believe it would only arouse opposition from the public, and the losses will ultimately outweigh the gains when the public take back their trust.

President, I so submit.

MR CHAN CHI-CHUEN (in Cantonese): President, it has been five years since the rail merger in 2007. Under the fare regulation arrangement in the integrated Operating Agreement signed between the then MTR Corporation and the Government at that time, either the MTR Corporation Limited (MTRCL) or the Government may request a review of the fare adjustment mechanism once every five years. This year is precisely the year that a review can be requested, and the public consultation on the review of the fare adjustment mechanism, that is, the FAM that we always talk about, was completed in mid-November. Like all the other public consultations conducted by the Government, this consultation commenced in silence and then ended also in silence.

Having said that, this is actually not important because this public consultation is meaningless. Members need only casually glance through reports, surveys and commentaries in major newspapers, or come down from their high horses and go to MTR stations personally to ask the public for their views on MTR fares, and they will see the picture clearly. It is because the public will have only one answer: "The MTRCL has made such huge profits and it is outrageous that it still wishes to increase its fares."

Public tolerance of the avarice of the MTRCL has been stretched to the limit. After the rail merger, it is stipulated that railway fares will not be adjusted upwards in 24 months but two years later, the MTRCL immediately increased its fares. Let us first recap the dark history of fare increases by the MTRCL in the past three years: In 2010, the MTRCL made a net profit of \$9.4 billion and its fares were increased by 2.05%; in 2011, a net profit \$12 billion was recorded and fares were increased by 2.2%; and in 2012, the MTRCL's net profit hit a new peak of \$14.7 billion, with a 5.4% increase made in its fares. Many colleagues have also mentioned these figures tonight. It shows that since the launch of the FAM, the MTRCL has frantically increased its fares when a huge profit is recorded year after year, never getting tired of doing so. I believe Members returned by direct elections all know and agree that if we wish to organize a signature campaign that can attract a good response, we must organize one in opposition to MTR fare increase, because this is supported by all the people, be they leftists, centrists or rightists. After putting down a signature in support of the democrats' campaign, one can then go over to the pro-establishment camp and put down a signature, or *vice versa*. Members of the public will come to us to put down their signatures on their own initiative. Early this year, I organized a signature campaign at railway stations in New Territories East and over 1 000 signatures were collected easily in just an hour or so.

In fact, a fare increase by the MTRCL was already predicted in many commentaries at the end of last year because the FAM has a formula. Tonight, many colleagues have time and again mentioned this formula. People who know that there is a formula will know what it is all about, whereas members of the public who do not know about it will continue to be kept in the dark, forced by the MTRCL to pay higher fares year after year.

Fares are determined only by directly linking the fares with the changes in the Composite Consumer Price Index (CCPI) (that is, the underlying inflation rate) and the wages in the relevant industry, and the FAM is a statutory mechanism which is binding on both the Government and the MTRCL. The MTRCL can, therefore, use it as an excuse, saying that it is required to follow this mechanism in determining the rate of increase or decrease in its fares. There is no way for the Government to exercise monitoring.

The then MTR Corporation and the Government boasted back in those years that the rail merger could make railway operation more cost-effective, thereby reducing the cost and bringing down the fares by a greater margin. These remarks are so familiar, somewhat like those made during our discussion on the motion on buying back The Link some time ago. These arguments are the same as those advanced by the Government in support of the listing of The Link back then, and the result that we see now is also the same as the result of the listing of The Link. A downward adjustment of the fares is merely an undertaking made at the time of the rail merger. Since the launch of the FAM, the MTRCL has never ceased to increase its fares.

The economic conditions under which the FAM was formulated were very different from those now. Hong Kong has recorded a rising economic growth rate for a successive number of years: In 2011, the real Gross Domestic Product growth was 5% and the inflation rate stood at a high of 5.3%. In an economic environment with such high economic growth, the MTRCL will only continue to increase its fares. As the economic growth is expected to continue in the next few years, if the FAM is not revised, it would be impossible to stop the MTRCL from increasing its fares.

The FAM follows the changes in the CCPI and the Nominal Wage Index (Transportation Section), and the largest component of the CCPI is food prices, which do not have a direct relation with the operational cost of the MTRCL. The growth of wages often falls behind the inflation rate, particularly as there has been no real growth in the wages of grass-roots workers in general for many years in a row. Inflation has eaten into the spending power of the public, and under this FAM, the burden on the people has only become increasingly heavy. Therefore, it is only when factors capable of reflecting public affordability (such as the real wage increase index) together with the other revenues of the MTRCL (such as revenues from property development, rental income, and so on) can be included in the formula that a fairer and better MTR fare system can be put in place.

Apart from the unfair arrangements under the FAM, another issue raised by Members today is the MTRCL's incapability to cope with incidents. In 2011,

close to 300 train delay incidents were recorded, with as many as four delays reported in a day, and incidents such as "station-skipping", power cut, and so on, also occurred from time to time. The MTRCL's ability to respond to major incidents has been criticized by all sectors of the community. For example, in the middle of this year during the onslaught of a typhoon, a tree fell down at the rail section between University Station and Tai Po Market Station, causing great traffic chaos. Although incidents caused by natural disasters are unpredictable, the handling approach of the MTRCL was indeed unacceptable. All the passengers affected on that day criticized the MTRCL for providing confusing information. Some passengers even said that before the train service was resumed, it was announced through the station broadcast that train service had resumed normal. Furthermore, no other diversion arrangement was made by the MTRCL, and some passengers had to suffer for the whole night until the next morning.

The public are extremely dissatisfied with the incidents of the MTRCL, be they major or minor, as well as the handling approach adopted, but the MTRCL has continued to increase its fares in the meantime. When its services are inversely proportional to its fares, no wonder the public consider fare increases by the MTRCL so detestable. The MTRCL has often introduced promotion schemes, such as "Ride 10 Get 1 Free", and I just found out that there are two such tickets in my wallet but I have forgotten to use them. Sometimes the queue was too long and I might choose not to redeem the free ticket, and even though I did line up for it, I have forgotten to use it. How many people can really benefit from it? We think that the Government should use the dividend income received from the MTRCL and the MTRCL's revenues from property development to set up a fare stabilization fund to offset the extent of fare increases.

Certainly, the position of the People Power is that in the long term, the Hong Kong Government should buy back all the shares of the MTRCL. Indeed, the People Power considers that the most fundamental solution is to buy back all the shares of the MTRCL and make the corporation a public asset. We have opposed this FAM from the very outset, and we are all the more opposed to contracting out public utilities for private sector management, particularly the railway network. In Hong Kong, railway is the backbone of the transport

system and with a daily average ridership of over 4.9 million passenger trips, its impact on the living of all the people of Hong Kong is most significant.

I so submit.

DR FERNANDO CHEUNG (in Cantonese): President, what exactly is this monster called MTR Corporation Limited (MTRCL), a listed company in the market or a public body? If it is a listed company, it is true that it is listed and obviously an organization that operates according to commercial principles, and it can increase its fares whenever it likes, with the ultimate purpose of making money. This is beyond doubt. However, a majority proportion, or over 76%, of the shares of the MTRCL is owned by the Government, and even all the Members of the Board are basically appointed by the Government. So, is this company a government body or what?

President, the MTRCL's face can change. When it needs to develop new rail lines, it seeks funding from the Legislative Council and becomes a government body. The MTRCL will say that after calculation, it is not very good if a new rail line is developed without subsidies from public coffers and in that case, it will not make the investment. Therefore, it asks the Government for land and funds whenever it develops new services, while the Legislative Council will invariably grant its approval. For example, a total spending of \$71.4 billion is incurred for the Shatin to Central Link; \$66.9 billion for the Guangzhou-Shenzhen-Hong Kong Express Rail Link; \$12.7 billion for the West Island Line; some \$900 million for the South Island Line; and there is also the right to develop property on the site in Wong Chuk Hang. Hong Kong people have put tens of billion and even hundreds of billion public dollars into its hand, and where are the profits hence made? They all go to the shareholders' pockets, not the people's pockets. This is all very strange. How come there is such lucrative business in this world? This is a business in which the Government provides capital and even public land. It is primarily set to make a profit because priority is accorded to railway under our policy. This railway corporation is awesome. I think it may probably be the public railway system with the highest patronage in the world. It is simply set to make a profit.

The MTRCL has made maximum profits and still increased its fares. It has also made sizable profits from above-station property development after paying the Government a premium below the market level. Just take a look at my ex-colleague, LAM Pun-lee. He bought eight development sites at \$4.9 billion back then and paid for the premium subsequently. At that time, the premium of land near Sha Tin, Wu Kai Sha, Che Kung Temple and Tai Wai ranged from \$999 to some \$3,700 per square foot but after the "inflating" process, the premium was actually about \$800 to \$3,000 per square foot. President, just look at those luxurious residential property developments such as the Palazzo, Festival City, and so on. Their price is close to \$10,000 per square foot.

In fact, we have been continuously subsidizing this corporation with public coffers. Its business is ever expanding and yet, it still increases its fares. The FAM does not take into account its profit level; nor does it consider the huge revenues generated from property development. The mechanism purely considers its cost. Not even an increase in its productivity is factored into computation. It is fine no matter how much more profit it is going to make, but an increase in the cost is a reason for the corporate to raise its fares. How possibly can there be such a business in this world, President? This is unreasonable and extremely outrageous.

Although the services of the MTRCL are quite good, many in the disadvantaged groups still do not dare to go out because of the expensive transport expenses. It is only after so many years of lobbying that fare concessions can be secured for persons with disabilities and the elderly, but these concessions are provided with additional government subsidies, not funded by the MTRCL. Our original purpose in lobbying for fare concessions is the hope that the MTRCL can fulfil its corporate responsibilities, but it has failed to do even this. When there were cases of the blind falling onto the tracks which necessitate the installation of platform screen doors, the MTRCL simply increased its fares to shift the cost to passengers. What is this corporation doing? It can surely make a profit, and it is taking the most advantage of Hong Kong people.

What good deeds has the MTRCL ever done? Last year, there were 19 incidents of passengers falling onto the tracks. Between 2006 and 2010, more than 400 people fell onto the tracks, with 77 of them injured or killed. These people are not even eligible for compensation under the Traffic Accident Victims Assistance Scheme administered by the Social Welfare Department, because the

scheme does not cover casualties in railway accidents. It is very difficult to sue the MTRCL through civil proceedings, and passengers' claims for compensation have all been ignored. The corporation is downright a scoundrel.

Members of the Board of the MTRCL are awesome too, as the monthly remuneration of a senior executive can be as high as over \$10 million. If we further look at its annual reports, we will note that their remuneration includes variable incentives payable based on the performance of the corporation and individual performance, including the rolling three-year operating profit. The fact is that the greater the profit made by the corporation, the more the money to be shared out among its senior managers. Where does all this come from? They are taking the most advantage of Hong Kong people. They are indeed vampires.

Although the MTRCL is the provider of a very important service, this service is provided with the hard-earned money of Hong Kong people. The MTRCL is detestable because what it has done is like "eating men without even spitting out the bones", knowing only to increase its fares rather than reducing them, and cost-wise, it definitely makes a profit and never suffers a loss. If this is allowed to go on, how can the many low-income earners in Hong Kong afford the transport expenses for MTR? The Government has completely washed its hand of this and entrusted all responsibilities to the MTRCL on the ground of commercial operation and decision. While the Government seems to be kind-hearted in saying so, it is indeed turning a blind eye to the interest of Hong Kong people.

Therefore, a buy-back is definitely the ultimate solution and in the short term, the FAM must be revised by, among other things, adding the Train Service Disruption Factor and setting up a rail fare stabilization fund. I also support the proposal made by Mr Kenneth LEUNG (*The buzzer sounded*) of imposing a ceiling. Thank you, President.

MR CHARLES PETER MOK (in Cantonese): President, the MTR Corporation Limited (MTRCL) is a major public transport operator in Hong Kong. According to the MTRCL's Annual Report 2011, the corporation's share of the franchised public transport market in Hong Kong rose to over 45% and the local

rail passenger services recorded a patronage of 1 366.6 million passenger trips. Assuming the fare of each journey is increased by \$0.1, the amount in question is \$130 million. From this we can see that the question of how MTR fares should be determined is an important and controversial issue pertaining to people's livelihood. This is particularly so because the MTRCL has been more than a transport enterprise since a long time ago, as it is also a major property developer, a major landlord, a large management company and a large consultancy, and huge revenues are generated from these businesses annually. Therefore, when such important livelihood issues as transport, property development and housing are lumped together, the situation will become all the more complicated.

The theme of Mr Michael TIEN's motion today is "Executive Council as gate-keeper for MTR fares", but I think the formula of the MTR FAM is the crux of the entire issue. Every public policy is set to face a tug of war among various stakeholders. Many conflicts will need to be rationalized, and it takes a lot of courage and efforts to do so. However, I do not agree that a re-formulation of the formula is bound to be "protracted, time-consuming and fruitless". This is an unfounded and unscientific remark to make. On the contrary, I think that using some stop-gap measures to barely prop it up will further complicate the problem.

Moreover, even if the Executive Council has the power to make a final decision on the rate of increase or decrease institutionally, this is only passing the problem to the political platform of the Executive Council, which means that livelihood issues will always become political issues. As a result, whether the fares will increase or decrease, and disregarding the rate by which the fares will increase or decrease, this will invariably become a political decision. This will not do any good to the Executive Council; nor will this be fair and transparent to the MTRCL and the public. Furthermore, the Legislative Council has the duty to monitor the Government, and if we support the abolition of an objective mechanism and pass the entire problem to the Executive Council, I think this is indeed inconceivable.

Therefore, I support that the FAM formula should be reviewed afresh, and this is the only responsible and scientific course of action. I support the proposals made by Mr Kenneth LEUNG and other Members in their amendments, which call on the Government to review the existing FAM of the MTRCL and particularly include quantifiable values or indicators in the formula

to ensure that calculation is done in an objective and transparent manner. Besides, the MTRCL has already changed in nature. It is not only a public transport operator, but also a corporation engaging in a wide variety of businesses and a member of the real estate sector which has been making colossal profits. Such being the case, whether we look at it from the perspective of the MTRCL's public role in society or consider the role expected of this corporation as a major enterprise with diversified businesses from a commercial viewpoint, the weightings of such factors as inflation rates, public affordability and profit level of the MTRCL's overall business, and so on, should be given more emphasis when considering the MTR fares, so that their weightings can be appropriately adjusted to make the entire adjustment mechanism more comprehensive and capable of keeping tabs on the economic conditions of Hong Kong.

In addition, the MTRCL, though being a listed company, has its public mission and so, making money should not be the only objective of its operation. For this reason, I support that a ceiling be set in the FAM to the effect that, for instance, no fare increase will be allowed if the profits of the corporation's overall business exceed a certain ceiling.

In fact, although it is said that the existing mechanism allows the fares to go upwards and downwards, judging from the results of fare adjustments made under the existing formula over the years, the fares have only been increased rather than reduced irrespective of whether the economy is good or bad. This has plunged the grass-roots people into hardships and besides, as many middle-class housing estates are now developed along the MTR lines, an increase in MTR fares will continuously add to the burden of the middle-class people who do not have many choices. I think a comprehensive review of the formula is the only way to tackle the problem at root.

Moreover, in respect of setting up a rail fare stabilization fund, I think discussions and studies can be conducted on this proposal. Does this "dedicated-funds-for-dedicated-uses" practice deviate from the Government's public finance management principle, or has the public's expectation of the Government's public finance management principle already changed in tandem with the social conditions? Similar "dedicated-funds-for-dedicated-uses" practices were discussed in the context of other policy areas before, such as the setting up of a universal retirement protection fund in respect of retirement protection, and a similar reserve fund has also been proposed for the purpose of

healthcare financing. Therefore, I think the Government should look at these issues with an open mind.

I also support the proposals made by other colleagues of increasing the provision of station facilities for the convenience of the public. For example, the provision of washrooms, baby-sitting rooms and barrier-free facilities at all the stations along all rail lines, and the introduction of territory-wide monthly passes. I think these are all very basic demands, and such facilities or measures are also provided in the railway systems of other cities. These demands are most reasonable too, especially as a rail journey may often take more than an hour now. It is indeed necessary for the MTRCL, being the railway operator, to respond to these basic needs of the people.

President, I so submit.

MR CHRISTOPHER CHUNG (in Cantonese): President, I know a grass-root worker living in Shau Kei Wan, who is only making a household income of \$10,000-odd. He works in Central. Yet, he leaves home two hours before the time of work every day, for he chooses to take the tram as a way to reduce his transport expense, and the journey takes him more than an hour to reach Central. Members may do the calculation. If he takes the MTR, it will only take him 20 minutes to go to work, but the Octopus fare is \$7.3 per trip. In other words, a round trip will cost him \$14.6 every day, and a total of \$438 for a month of 30 working days. If he takes the tram, it will cost him only \$2.3 per trip and a total of \$138 per month, which means a saving of \$300, yet at the cost of additional travelling time of an hour or so.

Secretary and Members, never consider this sum of \$300 insignificant. To grass-root families, it is a big sum. This friend of mine is eligible for the \$600 under the Work Incentive Transport Subsidy Scheme, yet he wants to save money by all accounts. Many grassroots are indeed like him, who would rather cut short their sleep by an hour or two and take the tram to work.

This phenomenon reflects a problem, which is the fact that transport expenses are expensive. Both buses and the MTRCL had been increasing their fares incessantly in the past three years. Those living on Hong Kong Island are regarded as lucky, for they can switch to the tram to save money. But for others, like my two assistants, one living in Tuen Mun and the other in Tai Po, they can

hardly have any option to cut transport expenses. Back then, the Government hoped that the implementation of the FAM, where fare increase and decrease were both possible, would reduce fares. Regrettably, it is just wishful thinking. Given the surge in inflation rate in recent years, the CPI and the wage index have been driven up, and thus the mechanism for fare increase and decrease has been reduced to a fare-increase mechanism. What an irony.

During the discussion in 2006 on the merger of the two railway corporations and the implementation of the FAM, under which fares can be increased and decreased, the DAB supported the proposal. For upon the merger of the two railway corporations, railway fares would be reduced by 10% immediately, and the MTR Corporation Limited (MTRCL) undertook at the time that fares would not be increased for two years. Actually, four years after the rail merger, the fares of certain routes were still lower than those before the merger. However, time has changed. Just as we cannot follow the teachings of a book for the entire life, we should not stick to the FAM forever, either. The mechanism has operated for five years by now. The demerits and inadequacies of the mechanism have gradually surfaced. As mentioned in the amendment of Mr CHAN Kam-lam, the formula has not included factors like the affordability of the public, the MTRCL's profit level and rail service performance, and so on. For this reason, we are facing the ridiculous scenario that the MTRCL may apply for a fare increase of 5.4% despite hoarding a colossal profit of \$14.7 billion this year. The DAB thus considers that the Government must seize this opportunity of the one-in-five-year review to examine and improve the FAM on a full scale, and include more reference parameters under the mechanism, such as the affordability of the public, the profit level of the MTRCL and the incident demerit points system, and so on.

Recently, an organization has released a survey on the top 10 sources of pressure in daily life. According to the survey, food expense is considered the heaviest burden to the grassroots, which is followed by rent and fuel expenses. As for transport expense, it is also on the list. It is evident that in the face of high inflation, transport expenses have caused increasing worries to the public. The Kowloon Motor Bus has recently made a gluttonous proposal of increasing bus fares by 8.5%, which will certainly spark a new wave of protest against price hikes.

The MTRCL made a net profit of \$14.7 billion last year. The Government being the major shareholder of the MTRCL, holding 76.7% of its shares, received dividends amounting to \$3,104 million. The government coffers, the shareholders of the MTRCL and the directors are all happy about that. However, the colossal profit is made at the suffering of the public who have been paying tremendous transport expenses. The Government uses public money to invest in the MTRCL. As money taken from the public should be spent on the public, the Government should return the colossal amount of dividends to the public by setting up a fare stabilization fund to lower the fares. The Government is indeed obliged to do so.

Regarding the deceptive concessionary measures introduced by the MTRCL, I will not dwell on them, for many colleagues have already expressed their views earlier. The DAB holds that the colossal profit made by the MTRCL and the expansion of its business into the Mainland market should completely be credited to the contribution of Hong Kong people over all these years. The MTRCL should fulfil its corporate social responsibility by shelving the fare increase plan this year and offer more unconditional and no-frills concessionary measures. The Government, being the major shareholder of the MTRCL, should make good use of its power to perform the monitoring function on behalf of the public. It should promote and implement a revision of the formula under the FAM, and let the Executive Council serve as the gate-keeper for the annual fare adjustment. As such, the MTRCL will become "a railway caring for Hong Kong people" but not "a railway carrying people to a dead end".

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, what a good speech. As CY says, only third-rate talents will engage in politics, for the first-rate talents are in the commercial sector. This is mercantilism. However, this mercantilism differs from the one prevails in Europe, as opposed to the agricultural industry. The mercantilism in question only emphasizes that everything done by businessmen is correct. Mr Michael TIEN says that the Executive Council should play the gate-keeper. What is he talking about? Does he remember that it was the decision of the Executive Council to effect privatization of the MTR with our money? The merger of the two railway

corporations was the decision of the Executive Council, was it not? How can it play the gate-keeper? Honestly, the Executive Council will fail even the task of holding an egg. The Executive Council cannot hold even an egg, for it is incompetent. It is incapable of holding it tight. An egg will lose some weight after passing its hand. My father always reminds me not to trust people who will make an egg lighter in their hands.

Those remarks by Mr Michael TIEN manifest the pride of businessmen or the worshipping of autocrats. I do not know whether he will have the chance to be a Member of the Executive Council and play the gate-keeper. But what kind of gate does it need to keep? How is it going to keep the gate? Can Members of the Executive Council come out to voice their views? The President used to be a Member of the Executive Council. You may throw bananas and splash water in the Executive Council, but you cannot say anything outside the Executive Council. What is the point of doing so then? Will the purpose of gate-keeping be achieved in the absence of transparency? Honestly, from the perspective of administration, this proposal is but a joke. Think about the boast of the executive-led set-up, should the executive-led set-up be enforced this way? It is a matter of the well-being of Hong Kong people. Has he gone mad after all those studies in the university in the United States? Is it reasonable for the President of the United States to decide the rate of fare increase?

I thus came to the conclusion that university education is no equivalent of competence. Actually, under the mechanism for monitoring the Government in Hong Kong, the Legislative Council is the most open forum, for the public can listen to what we say today. If the content of the meeting is not made open, people will give different remarks in different circumstances. They will say things pleasing to people in front of people, they will say things pleasing to God in front of God and say things pleasing to ghosts in front of ghosts. How can we know what they have said? They may act like a "beaten dog" in the Executive Council. What can we do with that? For this reason, the proposal of making the Executive Council the gate-keeper for MTR fares is total and utter rubbish, which only rubbish will put forth. Why not amend the FAM? He says that a buffer of 30% is set. But in what way is it useful? I suggest increasing this percentage, so that it can propose substantial cuts and settle for a bargain fare adjustment.

I am stubborn. First, when privatization was proposed at the time, I had stated absolute opposition. However, the Legislative Council back then heeded other views. It is true that the Executive Council regards the Legislative Council as a rubber-stamp. If the Executive Council is to play the gate-keeper, it means that the Legislative Council will be playing the maidservant. This is apportioning of political rewards. Moreover, an overwhelming majority of Members of the Executive Council are wealthy people. Raymond CH'IEN is a Member of the Executive Council, yet he is in the highest echelon of the MTRCL. There is also a man called CHOW Chung-kong — is he called CHOW Chung-kong? He will probably become a Member of the Executive Council. These people give a full display of the saying about inbreeding, which leaves idiotic people seated together at one table. On the one hand, it is earning over \$10 million a year, and the money is linked with the profit of the MTRCL

The apportioning of political rewards results in crippled politics. These people are then appointed to the Executive Council to make money. Only an idiot will propose making the Executive Council the gate-keeper. The MTRCL should definitely be bought back and be monitored by the Legislative Council. As the Executive Council has done something bad, evil and secretive, a relatively open and righteous organization should take up the responsibility to discuss and debate the policies, and to press on and to prevent the authorities from doing such things. The filibuster staged by me is a case in point. LEUNG Chun-ying says that he has to realize his manifesto. Should his desire to realize his manifesto override all issues? I now give you money, Mr Gary FAN, will you take it? This is dog bone. Take it, if you want; leave it, if you do not want it. Some people say that eating dog bone will cause stomach pain. He says there should be no problem. Even if somebody were forced to jump off a building two years later when an assets test was introduced, there would still be no problem. The DAB and the Liberal Party have been urging us to pass the proposal quickly, or else we will be causing sufferings to the elderly. Now, the Government even accuses me of obstructing the issue by deliberately delaying the motion on funding application. These nasty villains are worse than third-rate, they are the worst ninth-rate persons.

Back to the subject, everyone must use public utilities. The policy of giving priority to railway is promoting monopoly in the disguise of protecting the

environment. Once privatization and the merger were agreed, they made use of the "order" to become consultants in Stockholm and Shenzhen, to take part in real estate speculation and to engage in all kinds of businesses. If they are short of funds, they will act like an unengaged and spoil child from a wealthy family, who will count on his elder brother to foot the bill. They keep stating that they are a public organization, and if funds are not provided, it will do a disservice to the public. If Members of the Legislative Council do not approve the funding application, they are doing a disservice to Hong Kong people. For instance, if MTR service is not provided in the Southern District, they will place the blame on us. These decisions were approved by the Executive Council, were they not? In what way has the Executive Council fulfilled its gate-keeper's role? It is incapable of holding an egg, simply incompetent. An egg put in their hand will lose some weight. What an idiot.

What can a political idiot do? He cannot but shine the shoes of the Executive Council. But buddy, you may not necessarily get a seat in the Executive Council. The Executive Council is the source of all evils. It is a club for apportioning political rewards, and all members are appointed by the worst ninth-rate politico, the Chief Executive. Are you asking them to play the gate-keeper? We here are some ninth-rate and third-rate men, yet we are open and monitored by the public. You had better read some books first. Go home and sleep. You are completely incompetent, incapable of even holding an egg, let alone wrestling with a chicken. Go away, you are so incompetent.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at three minutes to Ten o'clock.