

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 19 February 2014

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, G.B.S., J.P.

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

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

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

THE HONOURABLE WONG KWOK-HING, B.B.S., M.H.

PROF THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P., Ph.D.,
R.N.

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, S.B.S., 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 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

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

MR YAU SHING-MU, J.P.
UNDER SECRETARY FOR TRANSPORT AND HOUSING

CLERKS IN ATTENDANCE:

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

MRS JUSTINA LAM CHENG BO-LING, DEPUTY 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:

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Toys and Children's Products Safety (Additional Safety Standards or Requirements) Regulation	17/2014
Toys and Children's Products Safety Regulation (Repeal) Regulation	18/2014
Toys and Children's Products Safety (Amendment) Ordinance 2013 (Commencement) Notice	19/2014
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 2014	20/2014
Air Pollution Control (Amendment) Ordinance 2014 (Commencement) Notice	21/2014

Other Papers

- No. 74 — Education Scholarships Fund
Trustee's Report on the Administration of the Fund and
Financial Statements for the year ended 31 August 2013
- No. 75 — Vocational Training Council
Annual Report and Financial Report 2012/2013

No. 76 — The Government Minute in response to the Report of the Public Accounts Committee No. 60A of November 2013

Report No. 11/13-14 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Stamp Duty (Amendment) Bill 2012

ADDRESSES

PRESIDENT (in Cantonese): Address. The Chief Secretary for Administration will address the Council on "The Government Minute in response to the Report of the Public Accounts Committee No. 60A".

The Government Minute in response to the Report of the Public Accounts Committee No. 60A of November 2013

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, laid on the table today is the Government Minute (GM) responding to Report No. 60A of the Public Accounts Committee (PAC).

After conducting eight public hearings, the PAC presented Report No. 60A to this Council on 27 November 2013, setting out its conclusions and recommendations on Chapter 7 of the Director of Audit's Report on "Preventive education and enlisting public support against corruption". This value-for-money audit conducted by the Audit Commission focused on three areas of work of the Independent Commission Against Corruption (ICAC), that are preventive education, enlisting public support and strategic planning and performance measurement. When examining these areas, the PAC also conducted an in-depth inquiry into the ICAC's internal administrative controls over official entertainment, duty visits outside Hong Kong and bestowal of gifts. I would like to express my gratitude to the PAC for the time and efforts it has devoted to conducting the hearings and making the recommendations.

President, the ICAC just celebrated its 40th anniversary last week. May I take this opportunity to commend all ICAC officers for their dedication all these years to the ICAC's work on combatting against corruption and creating a culture

of probity in Hong Kong. My gratitude also goes to all those who have served on ICAC's various advisory committees.

The report revealed the inadequacies and non-compliances of the ICAC in the handling of official entertainment, duty visits outside Hong Kong and gifts during the tenure of its former Commissioner, which gave rise to wide community concerns. The PAC also exceptionally made some very strong criticisms in the report. Although many of the issues highlighted were related to the personal judgments or decisions of the former Commissioner, they have caused wide public concern and inevitably undermined the ICAC's image and Hong Kong's reputation as a corruption-free society both locally and overseas, and have shaken people's confidence in the ICAC. The Chairman of the Advisory Committee on Corruption, Mr CHOW Chung-kong, earlier said that the incident was upsetting and regrettable. I share his feeling.

President, it takes a very long time for a public organization to build up its credibility, which may, however, be easily damaged by isolated incidents. Therefore, we must remain vigilant and endeavour to refine the systems in order to minimize the possibility of similar problems occurring in future. It is also essential that public officers should always uphold a high standard of probity and integrity in fulfilling the mission of their organizations.

The Government is very concerned about the issues raised in the report. We are also determined to introduce measures to restore Hong Kong people's confidence in the ICAC. In fact, back on 2 May 2013, the Chief Executive has announced the establishment of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits (IRC). The IRC released its report on 12 September 2013, making a number of recommendations for improving the ICAC's systems and procedures for handling expenses on official entertainment, gifts and duty visits. The ICAC has accepted the recommendations made by the Audit Commission, the PAC and the IRC. It has also set out in detail in the GM its specific responses to the work of its Community Relations Department (CRD) on preventive education and enlisting public support against corruption and its internal administrative controls. Now, I would like to highlight the key measures already taken by the ICAC and the progress made.

Since the ICAC's inception, the CRD has shouldered the statutory duty of educating the public against the evils of corruption and enlisting public support in

combating corruption. It has also collaborated closely with other departments in the ICAC to fight corruption. This three-pronged approach has earned recognition and support from the community. Besides making face-to-face contacts with members of the public to get the anti-corruption message across, it also makes extensive use of the mass media and web platforms/new media to enhance the overall effectiveness of the work of the CRD and the transparency of the ICAC.

In the light of the Director of Audit's recommendations, the ICAC has taken appropriate follow-up measures on preventive education and enlisting public support against corruption in order to address the PAC's concerns over the work of the CRD. By taking on board measures such as extending preventive education activities for the youth, stepping up corruption prevention education and advisory services in building management, fine-tuning the strategy for providing services to private organizations (including non-profit-making organizations), monitoring the training needs of government departments and public organizations closely, and promoting clean and fair elections message extensively, we believe that the effectiveness of the CRD's work will be further enhanced.

Public support is essential in combating corruption. We attach great importance to encouraging the public to report corruption. The ICAC will keep under constant review the CRD's strategies for enlisting the support of the general public and district organizations, and study ways to further encourage the reporting of corruption. To ensure prudent use of public funds, the ICAC will also conduct a comprehensive review of the cost-effectiveness of using shop fronts of commercial buildings for its Regional Offices. In addition, the CRD has reviewed its policy on preparation of work plans for better strategic planning and management in the long term. From the financial year 2014-2015 onwards, apart from annual work plans, the CRD will map out five-year business plans to set out the objectives of strategic positioning and planning more precisely. Moreover, following a review of all relevant performance targets and indicators in the Controlling Officer's Report (COR) and having regard to the Director of Audit's recommendations, the CRD has set new targets and indicators, and also revised upward several performance targets in the COR.

Regarding improvement measures on internal administrative controls over official entertainment, duty visits outside Hong Kong and bestowal of gifts, the ICAC is currently implementing the various recommendations of the Audit

Commission, the PAC and the IRC, and the measures have been duly reflected in the Commission Standing Orders (CSO) and its internal guidelines.

On entertainment, the ICAC has banned the serving of hard liquor from all official entertainment. It has also been set out clearly in the CSO that all expenditure items (such as wine, dessert, snacks, beverages, and so on) incurred before or after the same event must be included as part of the total entertainment expenses, and splitting of bills or charging them to different votes is strictly prohibited. Exceptional approval must be sought from the Commissioner if expenses exceed the ceiling regardless of whether the expenses are charged to the Publicity Vote or the Official Entertainment Vote.

Regarding duty visits outside Hong Kong, ICAC officers are required to avoid non-official activities and modification of itinerary for private reasons is prohibited unless with the Commissioner's prior approval, which is normally only granted on compassionate grounds.

On bestowal of gifts, the CSO has been updated to require that the exchange of gifts on official occasions should be limited to the minimum. Where it is unavoidable, the exchange should be made among organizations and only one standard souvenir inscribed with the ICAC logo should be presented to the organization concerned.

To improve the overall administrative control and ensure good governance, the ICAC has put in place an internal audit mechanism and enhanced staff training to ensure that its staff understand the improved administrative measures and strictly comply with the relevant requirements. The Commissioner will also report to the Advisory Committee on Corruption on the details of the official entertainment he conducted that exceeds the expenditure ceiling.

The ICAC will continue to conduct regular reviews on its regulatory procedures and the CSO, with a view to continuously updating and perfecting the existing regulatory systems.

President, in submitting Report No. 60A, the Chairman of the PAC, Mr Abraham SHEK Lai-him, made a strong remark that the inadequacies and non-compliances of the ICAC in the handling of official entertainment, duty visits outside Hong Kong and gifts during the tenure of its former Commissioner had eroded the credibility of the ICAC in educating the public and enlisting public support against corruption. While I understand that it is impossible to fully

address public concerns merely with the GM tabled today, I trust that under the leadership of the incumbent Commissioner, the ICAC will continue with the follow-up actions and effectively implement the various recommendations, and consolidate the image of ICAC combating corruption with unceasing efforts in the eyes of the public, and their position as the forerunner in corruption prevention in the world.

President, I would like to reiterate that probity is an important core value of Hong Kong and combating corruption is crucial to the overall development of our community. Adhering to the principles of fairness and probity, the current-term Government is committed to upholding the highest standard of integrity and conduct in the civil service. In this regard, apart from the follow-up actions taken by the ICAC, last year the Chief Executive asked the Civil Service Bureau and the Administration Wing, by making reference to the IRC Report, to review government guidelines pertaining to official entertainment, gifts and duty visits to ensure that the conduct of government officers meets public expectations.

After a comprehensive review, the Government has issued new guidelines reminding public officers to refrain as far as possible from bestowing gifts or souvenirs during the conduct of official activities. We have also revised the existing guidelines, emphasizing the need for public officers to uphold the principle of economy when entertaining guests for official purposes. As regards duty visits, the Government has reminded public officers that they should strictly abide by the relevant regulations and seek approval for every application for duty visits, with detailed records, in order to ensure proper use of public funds.

President, when interviewed by the media the other day, the incumbent Commissioner said that the incident was an unprecedented challenge for the ICAC in its 40-year history, and his colleagues were confronted with some sarcastic comments as a result. Nevertheless, I cannot agree more with the remarks made by the Chairman of the PAC when tabling the report that the dedication and good work of the ICAC and its staff had made Hong Kong a world renowned corruption-free city during the past 40 years. I trust that under the leadership of the incumbent Commissioner, colleagues of the ICAC will stay committed to combating corruption and upholding Hong Kong's core values. They will also strive to rebuild the ICAC's credibility and maintain Hong Kong's reputation as a corruption-free society.

Thank you, President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Compliance with Anti-corruption Laws by Mainland Officials in Hong Kong

1. **MR DENNIS KWOK** (in Cantonese): *President, Article 22(3) of the Basic Law stipulates that "[a]ll offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region". Moreover, Article 63 of the Basic Law stipulates that "[t]he Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecution procedures, free from any interference". In this connection, will the Government inform this Council:*

- (1) *whether it has studied if the personnel of the offices set up in the Hong Kong Special Administrative Region by departments of the Central Government (CG offices in Hong Kong) who have committed the following acts have breached the laws of Hong Kong: (i) offering any advantage as defined under the Prevention of Bribery Ordinance (the Ordinance) to any public servant as an inducement to or reward for the public servant's performing or abstaining from performing any act in his capacity as a public servant, and (ii) soliciting or accepting any such advantage as an inducement to or reward for their performing or abstaining from performing any act in relation to the affairs or business of their offices; if it has studied, of the results;*
- (2) *whether it has studied if "advantage" as defined in the Ordinance includes (i) the appointment of a person to an official position on the Mainland (for example, a deputy to the National People's Congress or a member of the National Committee or a Local Committee of the Chinese People's Political Consultative Conference (CPPCC)), and (ii) an undertaking or act to provide assistance to a person for his appointment to an official position on the Mainland; if it has studied, of the results; and*

- (3) *whether it has reviewed if the existing legislation is adequate for imposing criminal sanctions on those who have committed the following acts: public servants soliciting or accepting deferred benefits (such as post-service appointment to an official position on the Mainland) and those personnel of CG offices in Hong Kong offering such deferred benefits to public servants; if it has, of the details; if not, the reasons for that?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the question raised by Mr Dennis KWOK involves the understanding, interpretation and application of legal provisions. It is of paramount importance that any deliberation on whether a legal provision is applicable to a specific situation should be based on relevant facts and evidence, generalized discussion is inappropriate and should be avoided. Furthermore, the application of criminal laws is a matter for the Court. In order not to prejudice the fair and effective administration of criminal justice, it is not appropriate for the Government to make any overly specific comments outside the judicial process. Subject to the aforesaid, the Government's reply is as follows:

- (1) There are different laws in Hong Kong that govern different categories of corrupt conducts. Statute law includes the Ordinance. According to section 4(1) of the Ordinance, any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to which the Ordinance refers (advantage), to a public servant as an inducement to or reward for or otherwise on account of that public servant's performing or abstaining from performing any act in his capacity as a public servant, may commit an offence of "offering advantage to a public servant".

In addition, by reason of section 9(1) of the Ordinance, any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of the agent's doing or forbearing to do any act in relation to his principal's affairs or business, may commit an offence of "soliciting or accepting advantage by an agent". Section 2 of the Ordinance stipulates that an "agent" includes a public servant and any person employed by or acting for another.

With regard to the offices set up in the Hong Kong Special Administrative Region (HKSAR) by departments of the Central Government and their personnel, Article 22(3) of the Basic Law stipulates that such offices and personnel shall abide by the laws of the HKSAR, including the Ordinance.

However, it should be emphasized that regardless of what bodies or persons are involved in a case, whether or not the relevant conduct is in breach of the laws of Hong Kong depends on the specific circumstances, relevant evidence, and the applicable laws in each individual case. There is no place for generalization.

- (2) Section 2 of the Ordinance defines "advantage" as to include "any office, employment or contract" and any offer, undertaking or promise, whether conditional or unconditional, of any advantage such as office, employment or contract. Whether "advantage" as defined in the Ordinance includes an official position in Hong Kong, or in the Mainland or overseas depends on the specific circumstances, relevant evidence and the applicable laws in each individual case. Again, there is no place for generalization.
- (3) "Deferred benefits" is neither a term of art used in the legal context nor a term that is found in the Ordinance. Under section 4(2) of the Ordinance, any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts advantage as an inducement to or reward for or otherwise on account of his performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant, may commit an offence of "soliciting or accepting advantage by a public servant". The offence of "offering advantage to a public servant" is also stipulated in section 4(1) of the Ordinance. A public servant who solicits or accepts advantages, and performs or abstains from performing, or has performed or abstained from performing, any act in his capacity as a public servant may commit the said offence.

As mentioned in part (2) of my reply, whether "advantage" as defined in the Ordinance includes a certain official position and whether "deferred benefits" constitutes an "advantage" as stipulated

in the Ordinance depend on the specific circumstances, relevant evidence and the applicable laws in each individual case. There is no place for generalization.

MR DENNIS KWOK (in Cantonese): *President, how many mistakes do the authorities have to make and how many problems should have emerged before the authorities are ready to face squarely the issue of deferred benefits? In fact, the issue of deferred benefits is nothing new, from the LEUNG Chin-man case to the current Timothy TONG case, deferred benefits are involved. The public is concerned about the deferred interests arising from the post-service appointment of some senior officials to certain positions or public office. As the Chief Secretary has just said, she knows that her words alone may not be able to address public concerns.*

Regarding the Chief Secretary's response, I would like to know, in respect of the issue of deferred benefits, will the Administration positively consider amending the existing ICAC rules and the provisions of the Ordinance, so as to eradicate cases of post-service appointment of public officers to other positions?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): *President, I do not agree with Mr Dennis KWOK that there are shortcomings in our work on corruption prevention. Most important of all, our laws are sufficiently explicit, the investigation body has high credibility, and the prosecution procedures are free from any interference, as mentioned by Mr Dennis KWOK in his main question. Hence, as far as these three areas are concerned, our corruption prevention work is adequate.*

MS CYD HO (in Cantonese): *President, I would also like to ask a question about deferred benefits. Though there is no such term in any ordinance, such benefits do exist. Government officials have to bear responsibility for allowing the outgoing LEUNG Chin-man to take up another employment. The authorities have thus formulated an additional administrative measure, requiring officials to undergo a period of "sanitization" after leaving the Government before they can take up other work. If the Chief Secretary is unwilling to face up to the concerns about deferred benefits, this is a fault in itself.*

May I ask if the Chief Secretary is determined to dispel public queries about deferred benefits and save the Government from embarrassment? Will she consider extending the scope of regulating the employment of some outgoing public officers? For instance, will she consider extending the scope of regulation from the Civil Service to accountability officials, and even to the Chief Executive and the key personnel of statutory bodies, such as the Securities and Futures Commission (SFC) and the ICAC?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, as stated in my main reply, whether or not the deferred benefits constitute benefits under the Ordinance depends on the specific circumstances, relevant evidence, and the applicable laws in each individual case. In enforcing the Ordinance, it is most important that the investigation body should have credibility and the prosecution procedures are free from interference. Thus, at present, we do not have any plans to do what Ms HO has just mentioned.

MS CYD HO (in Cantonese): *President, my supplementary question is not about the existing laws and I agree with the Chief Secretary that this is not a legal issue.*

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

MS CYD HO (in Cantonese): *My supplementary question is whether she will extend the scope of regulation from the Civil Service to the Chief Executive, accountability officials and the key personnel of statutory bodies, such as the ICAC and the SFC.*

PRESIDENT (in Cantonese): Chief Secretary, the Member asked if the scope of regulation would be extended.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the Ordinance has explicit provisions on public officers and prescribed officers.

MR ALAN LEONG (in Cantonese): *President, concerning deferred benefits, civil servants who joined the Civil Service in recent years are not appointed on pensionable terms. So, I am afraid that the idea and concept of offering high salaries to prevent corruption is no longer applicable and civil servants will have to make plans for retirement. Since the situation has changed, will the Secretary inform this Council if the Government has plans to consider and come up with new guidelines for the possible deferred benefits of civil servants after they have left office?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): *President, we have never merely relied on the pension scheme mentioned by Mr Alan LEONG to ensure the integrity of civil servants. Mr LEONG thinks that there is sufficient protection under the pension scheme, and he is worried that there will be insufficient protection if the pension scheme is no longer implemented.*

The Civil Service Bureau adopts a three-pronged approach in the administration of the integrity of civil servants. First, we rely on the system and we strive to prevent corruption through constant updating and improving the system; second, we provide training to civil servants; third, we resort to sanction, including the deduction or suspension of pension payment for retired civil servants. Under the present circumstances, we have a rather effective three-pronged approach to ensure the integrity of civil servants.

As I have just said, the system can be constantly updated. The Civil Service Bureau has constantly updated and improved the system in the light of incidents that occurred or lessons learnt from special cases. As I mentioned earlier, on the irregularities concerning the entertainment expenses of the former Commissioner of the ICAC last year, the Civil Service Bureau has conducted a review in association with the Administration Wing and has updated the guidelines. Efforts will continue to be made.

MR ALAN LEONG (in Cantonese): *The records of this Council can clearly reflect the Chief Secretary's reply to my supplementary question. Given that civil servants who have recently joined the Government are not on pensionable terms, I would like to confirm if the authorities will not further consider, analyse or issue new guidelines to them. Is this the Chief Secretary's reply?*

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): My reply is explicit enough. When we deal with the integrity of civil servants, we will not consider whether or not they are on pensionable terms.

MR TAM YIU-CHUNG (in Cantonese): *President, please allow me to cite Article 21 of the Basic Law in raising my supplementary question.*

It is provided under Article 21 of the Basic Law that "Chinese citizens who are residents of the Hong Kong Special Administrative Region shall be entitled to participate in the management of state affairs according to law."

"In accordance with the assigned number of seats and the selection method specified by the National People's Congress, the Chinese citizens among the residents of the Hong Kong Special Administrative Region shall locally elect deputies of the Region to the National People's Congress to participate in the work of the highest organ of state power."

If these citizens can elect deputies of the Region to the National People's Congress or participate in voting in accordance with the selection method, how is this provision related to the benefits as defined in the Ordinance? Is there any relevance between the two? I would like to know the Chief Secretary's views.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I share Mr TAM Yiu-chung's views, and therefore I have stated in the main reply that such association is inappropriate. Given that there is no specific case, we cannot make sweeping generalizations. In fact, I think TAM Yiu-chung may know that outgoing civil servants are required file applications for outside employment within the control period. However, the applications will definitely be approved if the outgoing or retired civil servants are applying for unpaid positions in some non-commercial organizations, including institutions in the Central People's Government.

MR ALBERT HO (in Cantonese): *President, deputies to the National People's Congress (NPC) are elected in a small-circle election, and they are not directly appointed. I would not talk about the NPC for the time being, and would cite the Chinese People's Political Consultative Committee (CPPCC) as an example as recommendation and nomination are usually required for the election of CPPCC members. I believe the Chief Secretary still recalls that it is reported earlier that Mr LEW Mon-hung asked Mr LEUNG Chun-ying to recommend him for appointment as a member of the Standing Committee of the CPPCC. This is precisely the situation that we are discussing. Will such recommendations constitute interests?*

I know that the Secretary mentioned in part (2) of her main reply that there is no place for generalization and it depends upon the circumstances. I certainly understand that this is a very simple matter of common sense. However, may I ask the Chief Secretary, if someone promises a public officer that he would recommend him to be a member of the Standing Committee of the CPPCC, but the public officer has to do certain things for him in return, will this situation constitutes a violation of the Ordinance?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): *President, I hope Mr HO, who is a member of the legal profession, would understand that I cannot and should not comment on individual cases; similarly, I cannot and should not comment on certain situations. He has very explicitly asked if this situation will violate the law or if it is improper to do so. Please excuse me for not giving any response. I also hope that Mr HO would understand, as mentioned in my main reply, I actually wish to ensure the fair and effective operation of our criminal and judicial systems in not giving a response.*

MR ALBERT HO (in Cantonese): *President, I guess the Chief Secretary has heard very clearly that I am not asking her if this is certainly an offence. A law-enforcement officer should understand the legal application of a concept and the scope of application. Thus, I have put the question very carefully. I have simply asked her if it is possible that this may be a violation of the Ordinance. Can she not even answer if the law may or may not be violated?*

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I believe whether or not there is a breach of the laws depends on the specific circumstances, relevant evidence and the applicable laws in each individual case. This is my reply to Mr HO's question.

MR ALBERT HO (in Cantonese): *President, my question contains the word "may" but it seems that I have not heard this word in the Chief Secretary's reply.*

PRESIDENT (in Cantonese): Mr HO, the Chief Secretary has already replied. If you are not satisfied, you may follow up on the matter through other channels.

MR NG LEUNG-SING (in Cantonese): *President, regarding this question, I would like to ask the Chief Secretary from another perspective. Many retired civil servants have provided a lot of services after their retirement. For example, a retired senior official of the Police Force has provided many voluntary services. In fact, the civil servants who have provided post-retirement services have set good examples. Will the Government consider compiling a list of such exemplary acts or identify opportunities for such post-service officials to provide training or education to incumbent civil servants? They can share their experiences of working in the Civil Service with probity and the achievements they got from providing the post-retirement services.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, Mr NG Leung-sing has made a very good suggestion. Indeed, countless retired civil servants have performed community services. They share their experiences and knowledge through these community services and the community is benefitted. The Civil Service Bureau and I will consider Mr NG Leung-sing's suggestion.

DR KWOK KA-KI (in Cantonese): *President, the Secretary's reply has missed the most important question. As we all know, CG Offices in Hong Kong,*

especially the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG), have quite a few privileges. For instance, a core security zone is set up for them, and another case in point is that Mr Timothy TONG, the former Commissioner of the ICAC, became a CPPCC member after he had warmly entertained some guests from the Mainland.

In part (2) of the main question, Mr Dennis KWOK has asked if a study has been conducted. However, the Chief Secretary's main reply has mentioned nothing about the study. She has not studied or seriously handled the matter. How can she think that there is no problem?

Since she earnestly hopes that there is no favouritism or benefits received, will she take the initiative to remind, instruct or even warn those to intend to become or have already become CPPCC members or NPC deputies, as well as some personnel of CG offices in Hong Kong, not to seek personal gains by abusing their powers, and not to violate the laws of Hong Kong, in order to maintain Hong Kong's image of probity?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I think Mr KWOK's supplementary question contains some unreasonable allegations, and I can only give a general answer. First, I will not comment on the case he just mentioned. Second, as I mentioned earlier in my reply, to maintain the Hong Kong's image of probity, I think we need to have effective laws, law-enforcement agencies with credibility and prosecution procedures that are free from interference. As our society already has these three conditions, I do not think it is necessary to conduct studies or reviews or to make changes.

DR KWOK KA-KI (in Cantonese): *President, in the last part of my supplementary question, I asked the Chief Secretary very explicitly if it is necessary to remind or even warn those personnel. The Chief Secretary has not given a clear answer; can she present her argument more clearly?*

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): I have clearly stated in the last Government Minute that public education is very important for maintaining Hong Kong's position as a city of probity. For this reason, the Community Relations Department of the ICAC will continue to make efforts to promote corruption prevention and anti-graft activities, including public education.

PRESIDENT (in Cantonese): We have spent nearly 22 minutes on this question. Second question.

Impact of Industrial Building Revitalization Measures on Cultural and Arts Workers

2. **MISS CHAN YUEN-HAN** (in Cantonese): *President, in the past decade or so, quite a number of local cultural and arts workers have rented industrial building units for use as studios. On the other hand, the Government announced in 2009 a set of revitalization measures to facilitate the redevelopment and wholesale conversion of old industrial buildings (revitalization measures), which have been implemented since April 2010. The results of the "Survey on the Current Status of Industrial Buildings for Arts Activities and Future Demand" released by the Hong Kong Arts Development Council in 2010 indicated that the revitalization measures had activated the transactions of industrial building units, posing problems such as increase of rentals and termination of tenancies to quite a number of cultural and arts workers who had set up studios in industrial buildings, and that situation was most acute in Kowloon East. In this connection, will the Government inform this Council:*

- (1) *whether it has conducted any survey on the number of tenants, vacancy rate and average rental of industrial building units in each year since the Government announced the implementation of the revitalization measures in 2009; of the measures taken by the authorities to assist those cultural and arts workers affected by the revitalization measures in coping with problems such as increase of rentals and termination of tenancies;*
- (2) *whether it has conducted any survey on the number of studios set up by cultural and arts workers in industrial building units in Kowloon*

East, and the average percentage of the rental expenses against the total income of such studios, in each year since 2008; whether the authorities contacted the cultural and arts workers affected by the revitalization measures and conducted related studies in the past three years, so as to understand their difficulties and needs; if they did, of the details; if not, the reasons for that; and

- (3) *whether it will conduct a comprehensive survey on the current uses of industrial building units in Kowloon East as well as those throughout Hong Kong, including the businesses of the tenants, the uses of the units, and so on; if it will, of the timetable; if not, the reasons for that; whether it will conduct a review of the impact of the revitalization measures on the cultural and arts workers, with a view to formulating development plans and policies for industrial areas which can better meet the actual needs of the stakeholders?*

SECRETARY FOR DEVELOPMENT (in Cantonese): Good morning, President and Honourable Members. President, the Government announced in October 2009 a series of revitalization measures to facilitate redevelopment and wholesale conversion of old industrial buildings with a view to providing more floor space to meet Hong Kong's changing social and economic needs. These measures have been implemented since 1 April 2010 and the deadline for submission of applications is 31 March 2016. Subsequently, refined measures were implemented in April 2012 and February 2014. As at end January 2014, the Lands Department had received 119 applications under the revitalization measures, of which 90 applications had been approved, and the relevant projects could provide about 979 000 sq m of converted or new floor space.

The objective of the revitalization measures is to better utilize the precious land resources of Hong Kong through encouraging the redevelopment and wholesale conversion of existing industrial buildings. The measures have to take into account the needs of the economic development of Hong Kong as a whole, and also the aspiration of the owners and users of industrial buildings, which is market-driven. The Government does not target at or tilt towards any particular sector. Applications for revitalization involve new uses in various areas, including the use for "Place of Recreation, Sports or Culture". Upon completion of conversion of the industrial buildings for such uses, floor space can be provided for the use of cultural and creative industries.

As for the demand for space from the arts sector, the Administration will provide support and assistance as far as possible through measures such as those under the arts and cultural policy and district development initiatives, and so on. The Home Affairs Bureau has been supporting and promoting arts and cultural development from the policy perspective, and the Hong Kong Arts Development Council (HKADC) has also been actively exploring more room for creative endeavours through partnership with different parties.

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

(1) and (2)

According to the information provided by the Rating and Valuation Department, the overall vacancy rate of private flatted factories had dropped from 8% in 2009 to 5% in 2012. At the end of 2013, the average rents for private flatted factories on Hong Kong Island, in Kowloon and in the New Territories were respectively \$150, \$163 and \$101 per sq m. The average rents for private flatted factories have been rising in recent years and the rate of increase between 2009 and 2013 is broadly comparable to the rising trend in average rents for private offices, private retail premises and private domestic units.

As for the support for the arts, the Home Affairs Bureau and the HKADC have been working closely with different sectors to promote arts development in Hong Kong. With funding support from the Home Affairs Bureau, the HKADC launched an "ADC Arts Space Scheme" by leasing about 10 000 sq ft of floor area in a building in Wong Chuk Hang at below-market rate. Under the scheme, arts studios will be made available for leasing to local visual and media artists at affordable rental fees. Fitting out works for the units are expected to be completed in the middle of this year. The HKADC is also working in collaboration with the Tai Po District Council to study the feasibility of converting a school premises in Tai Po which will soon be vacated into an arts centre. In parallel, the Government also encourages the development of cultural facilities in support of artistic endeavours by community organizations. For example, the Jockey Club Creative Arts Centre in Shek Kip Mei, which has 103 studios, operates on a non-profit

making mode to provide space for artists with policy support and rental subsidy provided by the Home Affairs Bureau.

As for Kowloon East, the Energizing Kowloon East Office (EKEO) of the Development Bureau has been kept contact with arts and cultural sectors from time to time (for example, in organizing workshops) to understand their views on the better utilization of vacant Government land for creative arts and cultural uses during the transformation process of Kowloon East. The EKEO has also partnered with artists and designers in place-making activities such as the 12-week Playful Thursday at Tsun Yip Street. In the "Fly the Flyover01" project, the open space underneath the Kwun Tong Bypass is converted into an informal cultural and performance venue that is open to the public for organizing, among others, cultural and arts activities, music performances, and architecture and planning exhibitions. To understand the operation plans and concepts of non-profit-making organizations on better utilization of the space underneath the flyover for creativity, arts and cultural use, the EKEO launched a Market Sounding Exercise at the end of last year. By making reference to the result of the Exercise, the EKEO will invite proposals from interested parties later this year with a view to identifying the most suitable operator as partner to operate the unused space underneath the flyover.

- (3) The Planning Department is now conducting a new round of Area Assessments of Industrial Land in the Territory, which will include sample surveys of the private industrial building units in the industrial areas throughout Hong Kong. In addition to uses of the units, the survey also covers the business nature and number of employees, and so on, of the unit users. The purpose of the assessments is to examine the usage patterns of the existing industrial sites and to explore whether the sites are suitable for converting into other more appropriate uses. Apart from factors of individual districts and sites, the overall demand for industrial land will also be considered. The entire assessments are expected to be completed within this year.

The EKEO will continue to explore opportunities to provide space for the creative industries and arts and cultural and arts community. These include optimizing the use of the remaining plots of flyover

sites and exploring the possibility of incorporating space for cultural and art uses into existing and new premises.

MISS CHAN YUEN-HAN (in Cantonese): *President, I would like to say that the Secretary did not quite understand the situation of Kowloon East. Strictly speaking, his main reply is nonsense. Why would I say so? When the Chief Executive officiated at an event relating to "Energizing Kowloon East", a group of young people protested on a flyover to oppose the planning of the Government. Nowadays, young people have come to a point where all government plans will be opposed. They targeted at Kowloon East because while the authorities vowed that the initiative of "Energizing Kowloon East" is beneficial to all, it has nonetheless stifled their survival and destroyed art activities that have commenced. The Secretary's main reply has prompted me to think that he is using the market to promote certain industries on the one hand, and suppress the cultural and arts workers in Kowloon East on the other.*

May I ask the Secretary, the Home Affairs Bureau and even the Chief Executive how they are going to guide the young people? I think this is precisely what the SAR Government needs to consider. Being hard hit by waves of rental increases, a group of creative young people has been forced to rise against government plans. If we can give impetus to this movement ...

PRESIDENT (in Cantonese): Miss CHAN, please clearly raise your supplementary question.

MISS CHAN YUEN-HAN (in Cantonese): *President, if the Government still refuses to consider how to tackle the situation under this circumstance, I think it is indeed a great failure. May I ask the Secretary if there is any plan to promote the cultural and creative activities in industrial buildings or to support the development of creative industry in industrial buildings? Does the Government have any plan in mind? I originally did not intend to raise this supplementary question, for fear that the Secretary does not know how to reply. I am however infuriated after listening to his response, so I decided to put it even though he may not know how to reply. How can he use those few examples to paint a picture of Hong Kong attaining great success ...*

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

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as I have pointed out in the main reply, the Government has not targeted at or tilted towards any particular sector when promoting the industrial building revitalization measures. For policies concerning arts and culture as well as the creative industry, I have given a number of examples in the abovementioned main reply to illustrate our work in this regard. Furthermore, I have stated in the main reply that by adopting an open attitude, we have explored with Members and the relevant sectors to see what can be done to better support them in the course of energizing Kowloon East.

(Miss CHAN Yuen-han stood up)

PRESIDENT (in Cantonese): Miss CHAN, what is your point?

MISS CHAN YUEN-HAN (in Cantonese): *The Secretary has not answered my supplementary question.*

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

MISS CHAN YUEN-HAN (in Cantonese): *I have just asked the Secretary clearly if the authorities can take the initiative to promote cultural and creative activities in industrial buildings, and whether there is any plan to support the development of creative industry in industrial buildings. The Secretary is not well-versed in the issue discussed in my supplementary question, but ...*

PRESIDENT (in Cantonese): Miss CHAN, you have repeated your supplementary question, so please be seated. Secretary, do you have anything to add?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I have already answered and have nothing to add.

MR CHRISTOPHER CHUNG (in Cantonese): *I have just left my post as a member of the HKADC and I also have strong views on this issue. The Secretary has already answered Miss CHAN Yuen-han's question. I just want to say that the initiative to revitalize industrial buildings has not targeted at or tilted towards any particular sector. To the cultural and arts workers, artists or people previously working in industrial buildings, this is indeed a cruel delusion. The policy has pushed the cultural and arts workers to a dead end and they have nowhere else to go. My supplementary question is: As evident from the present outcome, is this an attempt of the Government to stifle the cultural and arts workers? If not, will the Government re-consider converting the unused space in government buildings, flyovers and subways into workshops or performance venues for cultural and arts workers?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as I have said in the main reply, in the case of Kowloon East, open space beneath the Kwun Tong Bypass (that is, the "Fly the Flyover01") has been identified for use by art and performing art creators. Also, two more venues have been reserved for the same purpose. As I have stated in the main reply, an exercise is now underway. Once it is completed, we will consult and invite proposals from interested non-profit-making organizations, with a view to identifying suitable partners to provide services for the relevant industries using those two venues.

Furthermore, the process to revitalize Kowloon East also involves two action areas where government facilities and properties are found. Once the relevant facilities are relocated, the two action areas will be developed. Also, we will explore the possibilities of development and usage in the course of development.

MR MA FUNG-KWOK (in Cantonese): *Regarding the subject of revitalizing industrial buildings, I have a feeling that the Government has been evading from the negative impact brought about by the relevant policy and the blow dealt to the arts community in the past few years. The main reply has quoted a number of examples, such as the survey conducted by the HKADC a few years ago, which*

was also highlighted by Miss CHAN Yuen-han, and the Government responded that the results were not accurate. But what has it done throughout the years? Part (2) of the main question clearly asked "whether the authorities have contacted the cultural and arts workers affected by the revitalization measures and conducted related studies ... so as to understand their difficulties and needs; if they did, of the details; if not, the reasons for that?" Nonetheless, in response, the Government has only given three examples in the main reply: Firstly, it is the Jockey Club Creative Arts Centre in Shek Kip Mei built 10 years ago when the revitalization measure had yet to be put in place. Secondly, it is the leasing of 10 000 sq ft of space by the HKADC in a building, but three years have passed, no plan has so far been implemented. Thirdly, the conversion works of the Tai Po Government Secondary School is still at the planning stage and has yet to be approved by the Legislative Council. The policy has been implemented for three to four years, but what has been done by the Government? I can say that the affected artists have not benefited at all. Nor has the Government expressed any concern ...

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

MR MA FUNG-KWOK (in Cantonese): *Regarding part (2) of Miss CHAN Yuen-han's main question, may I ask the Government how it is going to respond to the unanswered part, that is, what have the authorities done to understand the actual needs of the cultural and arts workers?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, first of all, as pointed out in the main reply, staff of the EKEO has actually contacted artists and performing art workers in the district in various ways for more than once. This has naturally given rise to the question of how the unused space underneath the Kwun Tong Bypass can be utilized, as mentioned in the main reply.

Secondly, the main reply also stated that the Planning Department is now conducting a new round of Area Assessments of Industrial Land in the Territory by way of sample surveys. This will not only help identify the users of the industrial buildings, but will also find out the business nature of the users and the number of employees, thereby enabling us to get a better grasp of the concrete situation before formulating policies of the next stage.

Apart from the projects promoted by the Government, Members may also be aware that through the revitalization of historic buildings, room has been provided for workers engaging in the creative, culture and arts industry. Take the former Police Married Quarters on Hollywood Road as an example. The project has been completed and we are inviting interested parties to use the creative workshops there. There are about 130 studios and a soft opening has been scheduled for the second or third quarter of this year. The premise will give workers engaging in the creative, culture and arts industry room for creation. I can say that the entire policy of revitalizing industrial buildings has not targeted at or tilted towards a particular sector. It basically aims to better utilize the precious land resources where the industrial buildings are located in response to the demand for economic and social development. Such demand does not come from the creative and cultural industries alone, but also from different sectors of the community. They are influential to a certain extent and are able to influence the market.

MR CHUNG KWOK-PAN (in Cantonese): *In part (3) of the main reply, the Secretary said that the Planning Department is conducting a new round of Area Assessments of Industrial Land in the Territory, which will examine the business nature of the current users and explore the suitability of converting the sites into other more appropriate uses. Towards the end of the paragraph, the Secretary has even undertaken to consider the overall demand for industrial land. May I ask the Secretary about the current progress? It seems that no public consultation has been conducted. In that case, there is no way the authorities can find out the actual demand of people engaging in the creative and cultural industries and industrialists who have relocated back to the territory. Therefore, may I ask the Secretary if no consultation has ever been conducted?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as the current task requires a good grasp of the actual situation, we are still at a study stage.

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

MR CHUNG KWOK-PAN (in Cantonese): *President, the Secretary has not answered my supplementary.*

PRESIDENT (in Cantonese): Secretary, Member asked about the current progress and whether public consultation will be conducted.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the survey is expected to complete within this year. Once we complete the survey and get hold of the actual data and information, we will decide on the next stage of work.

MR CHUNG KWOK-PAN (in Cantonese): *The Secretary said that they will have to wait till the survey is completed, but my supplementary question is, how can the authorities find out the actual needs of the industry without conducting public consultation?*

PRESIDENT (in Cantonese): Mr CHUNG, this is your opinion and the Secretary should have heard it.

MISS ALICE MAK (in Cantonese): *President, in his reply, the Secretary has reiterated time and again the market factor, and the need for the revitalization of industrial buildings to tie in with economic development. This oral question has clearly asked the Government about the support for the cultural and creative industries. Secretary, has the Government introduced any measure to support the cultural industry? What other policy has been introduced apart from the revitalization of industrial buildings? In the abovementioned main reply, the Secretary has merely focused on Kowloon East and the proposal to utilize the space underneath the flyover can be regarded as a part of the "Energizing Kowloon East" initiative. Yet, this problem is not unique to Kowloon East, but is also found in other districts. Therefore, my supplementary question is: What territory-wide land policy has been introduced by the Secretary to support the development of the cultural and creative industries?*

PRESIDENT (in Cantonese): Miss MAK, the main question put by Miss CHAN Yuen-han asked specifically about Kowloon East. Secretary, do you have any response to Miss Alice MAK's supplementary question?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, regarding the territory-wide policy, I have already mentioned the policy of the Home Affairs Bureau in the main reply, which include the conversion of an unused school campus in Tai Po and the leasing of certain space in a building in Wong Chuk Hang to art creators below market price. Our major policy has been set out in the main reply.

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

Proposed Private Residential Development on a Site in Shau Kei Wan

3. **MR CHRISTOPHER CHUNG** (in Cantonese): *President, the Development Bureau announced in June last year that a site of an area of merely 476 sq m at the junction of Oi Tak Street and Oi Kan Road in Shau Kei Wan (Oi Tak Street site) would be included in the land sales programme of the current financial year. The site will be put up for sale by open tender on the 21st of this month for private residential development. Some residents in the district strongly oppose such an arrangement, pointing out that the "diminutive" waterfront site provides a maximum permissible gross floor area of merely 4 287 sq m, and that the new building, which will be very close to Tung To Court and Oi Po House of Oi Tung Estate, will obstruct natural lighting and ventilation of inland buildings. In this connection, will the Government inform this Council:*

- (1) *whether, before offering the aforesaid site for sale by tender, the authorities have studied the impact of the new building on the ventilation in the area, access to natural light by the lower-floor units of the buildings nearby and the property prices of the neighbouring estates, and the issue of the area of that site being possibly further reduced due to a 12-metre-diameter underground sewer discharging to the sea; if they have conducted such a study, and the outcome shows that the new building will not impact on the surrounding environment, of the justifications and data; if not, how the authorities know whether the plan has any impact on the residents in the vicinity;*
- (2) *given that, in the consultation document issued in September last year, the Long Term Housing Strategy Steering Committee suggested*

building single-block public rental housing buildings dedicated for singletons, but it has been reported that some Members of this Council, District Council (DC) members and members of the public oppose to constructing buildings by making use of every single space, and the consultation report will be released in the first quarter of this year, why the authorities have decided to hastily offer the Oi Tak Street site for sale by tender on the 21st of this month without waiting for the release of the report; whether it has assessed if the authorities have fully considered public views in making the decision to call for tenders; if it has assessed, of the outcome; and

- (3) *as I have learnt that, before proceeding with reclamation at the location of the aforesaid site and in its vicinity in 1999, the Government had made an undertaking to the Eastern DC that the reclaimed land would be used only for providing subsidized housing and community facilities rather than developing private housing, whether the Government has assessed if it has reneged on its undertaking by putting up the Oi Tak Street site for sale for private residential development?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, housing is a livelihood issue which is one of the prime concerns of the community. Tackling the housing issue is one of the priority tasks of the current term of the Government. To meet the public's strong demand for housing, the Government has to increase the supply of land for housing development. The Government is adopting a multi-pronged strategy to increase land supply in the short, medium and long term, through the continued and systematic implementation of a series of measures, including the optimal use of developed land as far as practicable and creating new land for development. One of the major sources of supply is the Government's various ongoing land use reviews, including review of the government land being vacant or under short term tenancy. In the past, the Legislative Council and the community have requested the Government to make optimal use of such land as far and as quickly as possible to meet the community's pressing demand for land.

The residential site at the junction of Oi Kan Road and Oi Tak Street in Shau Kei Wan (the Site) is a piece of vacant government land zoned "Residential (Group A)" in the Approved Shau Kei Wan Outline Zoning Plan No. S/H9/16.

Residential development is a use always permitted in the zone and in line with the planning intention. When considering whether the Site could be used for residential development and included in the land sale programme, the Government consulted relevant departments to ensure no insurmountable problem for residential development on the Site. The Site was included in the 2013-2014 Land Sale Programme in June 2013 and will be disposed of by open tender between 21 February and 4 April 2014.

I reply to the three part question as follows:

- (1) In the preparation of outline zoning plans (OZP), the Planning Department (PlanD) carries out relevant assessments to confirm the feasibility of relevant land-use proposals. The Site has been zoned "Residential (Group A)" since mid-1990s. When the Town Planning Board amended the Shau Kei Wan OZP in 2008, building height restrictions for various zones were incorporated. In formulating such building height restrictions, the PlanD conducted a visual appraisal and an air ventilation assessment (AVA) for the proposed restrictions within the zones concerned. According to the AVA report, the Site does not fall within any major breezeway or ventilation problem area.

Besides, building designs of private residential developments shall comply with the provisions of the Buildings Ordinance, including the provisions on air ventilation and natural lighting. The Government has also promulgated the Sustainable Building Design (SBD) Guidelines to facilitate air ventilation. There is a single-cell stormwater box culvert of around 3.5 m wide in the northern part ... Pardon me, President, it should be the north-eastern part of the Site. The Government will designate the drainage reserve area in the north-eastern part of the Site as a non-building area (see the attached map) in order to ensure that the existing underground drainage facilities will not be affected and address the local residents' concern about the potential impacts of the proposed residential development on its surrounding areas in terms of landscape, air ventilation and access to natural light. This arrangement will not affect the remaining area of the Site for residential development.

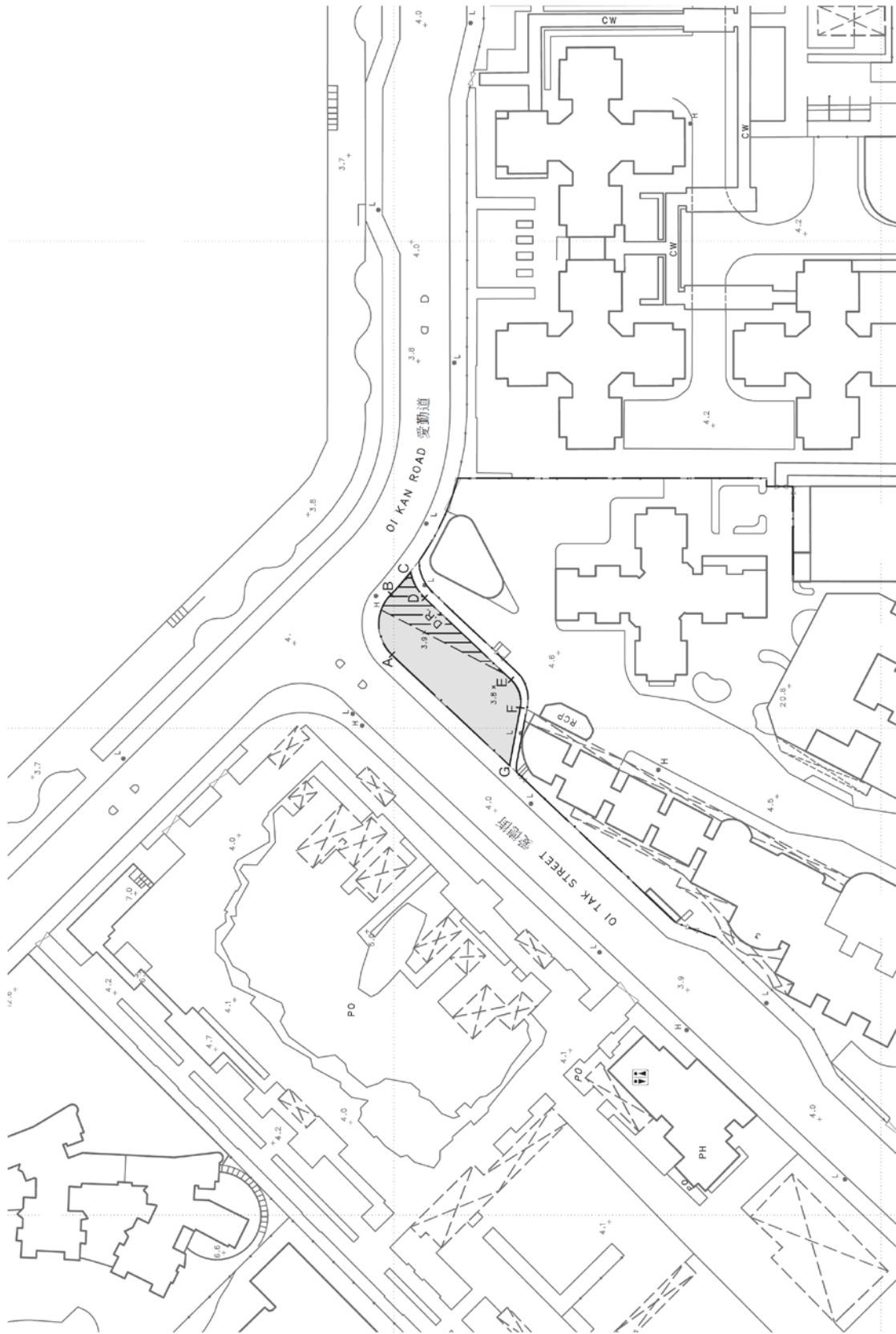
- (2) The Site is a piece of vacant government land and is not located within the lot boundary of any housing estate. The designation of the Site for private residential development is unrelated to the views of the Long Term Housing Strategy Steering Committee on constructing single-block public rental housing buildings at suitable sites within existing public rental housing estates.

The Government has made use of various channels to explain the designation of the Site for residential development to Legislative Council Members/DC members and local residents, including several written replies to the enquiries raised by Legislative Council Members/DC members and residents. The departments concerned, including the Lands Department and the PlanD, also met some Legislative Council Members/DC members and the representatives of the residents in September and October 2013, and attended the meeting of the Planning, Works and Housing Committee of the Eastern DC held on 18 October 2013. The departments concerned had explained to Members and the residents the planning and land issues of the Site. As mentioned above, the drainage reserve area in the north-eastern part of the Site will be designated as non-building area to address Members' and residents' concerns about impacts on landscape, air ventilation and access to natural light.

- (3) The land created through the Aldrich Bay reclamation is mainly used for housing, school and open space developments. As for the Residential (Group A) zone within the reclamation area, its planning intention is mainly for high-density residential development and there is no restriction on the types of housing development. In fact, the existing housing developments on the reclaimed land of the Aldrich Bay include both public and private housing.

In a nutshell, the Site is a piece of government land and housing development thereon is in line with the planning intention and requirements of the OZP concerned. Given the current acute shortage of land and housing supply, we should optimize the use of every piece of developable land resources, in particular conveniently located urban sites. The housing development on the Site can help meet the public's strong demand for housing in urban areas and benefit the community as a whole.

Map



筲箕灣內地段第854號

SHAU KEI WAN INLAND LOT No. 854

圖例 / Legend
 D.R. 渠務保留地/非建築用地
 Drainage Reserve / Non-building Area

MR CHRISTOPHER CHUNG (in Cantonese): *While the Secretary for Development stated in part (1) of his main reply that, "According to the AVA report, the Site does not fall within any major breezeway", I think this point is not borne out by facts. When local residents came to the Complaints Division yesterday, they told us that the Government indicated that no detailed report had been prepared for the Site in the context of the AVA assessment for the entire Shau Kei Wan district.*

As we can see clearly from the attached map, there are screen-like buildings stretching over 100 m on the side of Oi Po House, and according to the present proposal, the screen-like buildings will be extended to the harbourfront, creating serious air ventilation problems for the entire area. I would like to ask whether the Development Bureau will consider preparing a detailed report in this regard before the Site is put up for sale?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I have already mentioned in the main reply the contents of the report we published earlier, and I will not repeat the same here. Besides, President, as I have also stated in the main reply, we have already addressed the residents' concern. Regarding the underground sewer in the north-eastern part of the Site, we will designate the area as a non-building area. Visually, it is clear that there will be no building in this area so that air can flow in freely. Hence, it will not result in any major air ventilation problem.

President, we have no intention to conduct any other assessments.

MS STARRY LEE (in Cantonese): *President, it is necessary for the Government to identify sites and increase land supply, but in the process, we should indeed adequately address the different views held by nearby residents, so that they understand that the Bureau has already duly addressed their concerns.*

I have all along maintained contacts with the local residents as well as their representatives. One of their concerns is the approach adopted by the authorities in handling this site, and they question whether it has contravened the requirements laid down in the SBD Guidelines as set out in the paper on the revised "Measures to Foster a Quality and Sustainable Built Environment" issued by the Development Bureau in February 2011.

I would like to ask the Bureau whether they have read the guidelines set out in the paper, and how they can ensure that the land sale conditions of the Site or the building to be constructed in future is in compliance with the relevant guidelines, such that reasonable arrangements are made in accordance with the guidelines regarding building separation and air ventilation?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as stated in the main reply, residential development on the Site is actually no different from other private residential developments, and it must comply with the provisions of the Buildings Ordinance, including the provisions on air ventilation and natural lighting. At the same time, it must also comply with the SBD Guidelines promulgated by the authorities.

Moreover, as I have mentioned repeatedly just now, we have already designated the site above the single-cell stormwater box culvert in the north-eastern part of the Site as a non-building area, in order to address the local residents' concern about the potential impacts of the proposed residential development on its surrounding areas in terms of landscape, air ventilation and access to natural light.

MR SIN CHUNG-KAI (in Cantonese): *The Government has disregarded the undertaking made to the residents previously. This afternoon, the Council will proceed with the discussion on the "double curbs" measures, and the Government has indicated that it would give a certain undertaking. But in fact, the current-term Government will not acknowledge the actions taken by the previous terms of Governments. Actually, at the time when the Tung Tao Court and Tung Yuk Court were put on sale by the Housing Authority, the Government had specifically stated in the title deed, and especially the sales brochure of the Tung Yuk Court, that the site would be used for the construction of transport facilities, namely, a minibus terminus. Although the usage of the relevant site has been specified in the sales brochure, the Government has ignored it completely now and put up the Site for sale all the same. I would like to ask the Secretary if the Government can just ignore the undertaking made previously.*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the Site was once used as a minibus terminus, but the terminus was relocated in 2006 because

the Transport Department conducted a review in 2003 on the railway development policy, rationalization of bus services and public demand for public transport services. To tie in with the latest development, overall transport services and public transport planning in the nearby area, the green minibus terminus concerned was subsequently relocated to the Sai Wan Ho Public Transport Interchange in June 2006, so as to continue to provide convenient public transport services to nearby residents. As such, this site has been left vacant.

As stated in the main reply, given the public's strong demand for housing, especially the housing demand in conveniently located urban sites, we must optimize the use of every piece of land, including this site.

MR SIN CHUNG-KAI (in Cantonese): *The Secretary has not answered my supplementary question. I am not asking ...*

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

MR SIN CHUNG-KAI (in Cantonese): *... my supplementary question is whether the Government can disregard its undertaking to the residents. When the flats were put up for sale by the Government, it was clearly stated in the sales brochure that the site would be used for transport facilities. Given that the Government has already promulgated a new legislation on sales brochures, has it contravened its own ... Of course, the relevant legislation was not enacted at that time. But has the Government reneged on its undertaking to the residents by its present course of action? The site was planned for the construction of a minibus terminus, yet it is now put up for sale for residential development.*

PRESIDENT (in Cantonese): Secretary, the Member asked whether the Government has reneged on its undertaking.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I have already given an explanation, and I have nothing to add.

DR KENNETH CHAN (in Cantonese): *President, notwithstanding the Secretary's obstinacy, conceitedness and repeated errors, the Civic Party will still join the residents to demand openly that the tender be halted. President, I think you also have a clear picture. This Chamber has an area of 800 sq m. Excluding the underground drainage reserve area, the area of the Site is actually very small. If a 120 m high building of over 40 storeys is to be built on this tiny Site, how come it has no impact at all on the residents' health?*

President, here is my supplementary question: In the main reply, the Secretary mentioned that the Government had promulgated the SBD Guidelines; as such, whether the Guidelines are applicable to this special "diminutive" site? President, my understanding is that the Guidelines apply if the site has an area of two hectares or the building has a continuous width of 60 m. Is the Secretary lying?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I think we can draw different conclusions from different facts of the same case. Nonetheless, we must respect the facts. As I had already pointed out last week in response to questions raised by Members during the Policy Address debate, the Government had in fact also put up sites with an even smaller area for sale previously, including the recent case of the Sik On Street site in Wan Chai, as well as a site in Tung Chung last year. Therefore, this Site is not the smallest in size.

Secondly, according to the OZP, a building height restriction of 120 m above Principal Datum is imposed on the Site. Hence, it seems that the statement just made by Dr CHAN regarding the construction of a building of over 40 storeys may not tally with the facts.

President, since this Site was included in the Land Sale Programme in June last year, we have received letters from Members (including Members of the Legislative Council and District Council members) on many occasions, and have replied them accordingly. As stated in the main reply, my colleagues have also attended meetings in the districts to explain the relevant situation. At the same time, as I also said just now, we have designated a non-building area in the north-eastern part of the Site in order to address certain concerns of the public. I think we have already strived to address public concerns in this matter.

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

DR KENNETH CHAN (in Cantonese): *President, he has not answered my supplementary question.*

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

DR KENNETH CHAN (in Cantonese): *My supplementary question is whether the SBD Guidelines mentioned by the Secretary in the main reply apply to this Site with an area less than 0.05 hectares.*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I have nothing to add.

MR PAUL TSE (in Cantonese): *President, I can understand the Government's action given the acute shortage of land and the need to suit its measures to circumstances. Moreover, the Secretary has also explained the matter repeatedly. But, President, I am instead concerned about part (3) of the main question which states that the Government had made an undertaking to the District Council in 1999 when the reclamation project was proposed. I would like to know whether the authorities had indeed made the said undertaking. Nothing has been mentioned in this regard in the main reply. I would like to know whether the Secretary has tried to retrieve the contents of the said undertaking before giving his reply.*

SECRETARY FOR DEVELOPMENT (in Cantonese): If the Member wants to make such an allegation, please produce the evidence. In fact, the existing housing developments on the reclaimed land of the Aldrich Bay include both public housing, as well as private housing, *viz.*, Les Saisons.

MR PAUL TSE (in Cantonese): *My supplementary question is not whether ... My supplementary question is whether the Secretary has tried to duly ascertain the then undertaking made to the District Council? Has the authorities made such undertaking? If so, what is it about? Has the relevant undertaking been reneged on? I just want a simple yes or no.*

SECRETARY FOR DEVELOPMENT (in Cantonese): *If any Member wants to make such an allegation, please produce the evidence.*

MR SIN CHUNG-KAI (in Cantonese): *President, I think the Government will pay no attention at all to such evidence. When the former Chairman of Eastern DC drafted this question, he would have thoroughly checked against the minutes of DC meetings. Is that not an evidence? The Government just does not want to give a response, right?*

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

MR SIN CHUNG-KAI (in Cantonese): *Here is my supplementary question: As the residents concerned in the Eastern District also consider that this precious site should be used for development, they have suggested whether it will be more appropriate to construct a low-rise building on the Site, say, a residential care home for the elderly, so that the land will not be wasted. I would like to ask know if the Development Bureau and other Policy Bureaux will consider this suggestion?*

SECRETARY FOR DEVELOPMENT (in Cantonese): *In fact, according to the records reviewed by my colleagues, we have not made the undertaking as mentioned by Members just now. And as I also said just now, Les Saisons, a private residential development, has been built on the Site. Regarding the best use of the Site, we have, after assessment, decided that it is most suitable for private residential development.*

DR KENNETH CHAN (in Cantonese): *A remark in the Secretary's main reply reads as follows, "... to ensure no insurmountable problem for residential development on the Site". Now, residents of Oi Tung Estate, Tung Yuk Court and Tung Tao Court have formed an alliance against the sale and tender of the Site. Meanwhile, they also want to develop community facilities on the Site, and have submitted an application to the Town Planning Board (TPB). The case has entered the application stage. I would like to ask the Secretary what, in his opinion, should be done to alleviate the residents' objection?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the town planning process is open and transparent, and the TPB is also an independent organization. Any person can submit planning applications in accordance with the Town Planning Ordinance. As far as I know, the planning application mentioned by Dr CHAN just now was originally scheduled for consideration by the TPB in December last year, but had subsequently been deferred on the applicant's request. No meeting has been convened so far. Moreover, according to the information submitted by the applicant, such deferment does not involve any new arguments.

As planning applications can be submitted by any person in accordance with the town planning process, I think it will not be in line with the interest of society as a whole should we halt the sale of a site just because somebody has submitted a town planning application. Moreover, such action, if taken, will make us susceptible to sabotage by people who make use of procedures. I am not referring to the action taken by the residents concerned in this case, but generally speaking, procedure-wise, we must be mindful of this point. We will not allow any person who tries to sabotage our plan by making use of the procedures. Separately, we will set out clearly in the land sale conditions the current application lodged under the town planning process, so that the bidders will fully understand the risks involved and seek their own legal advice accordingly.

PRESIDENT (in Cantonese): Fourth question.

Abuse of Employment Arrangement for Foreign Domestic Helpers

4. **MR CHUNG KWOK-PAN** (in Cantonese): *President, according to the Standard Employment Contract (contract) for employing foreign domestic helpers (FDHs), employers have to provide their FDHs with free passage from Hong Kong to their places of origin on termination or completion of the contracts. Some employers of FDHs have relayed to me that some intermediaries for FDHs (intermediaries) and FDHs have seized the opportunity and collaboratively abused the arrangement for premature termination of contracts and change of employers (commonly known as "job-hopping"). They have employed various tactics to make the employers initiate contract termination with their FDHs so that the FDHs may receive the money for the passage and the intermediaries may charge new employers for placement service. However, instead of returning to their places of origin, such FDHs have departed for Macao, Shenzhen or other neighbouring places and then re-entered Hong Kong to work. Given that "job-hopping" by FDHs causes psychological and financial damages to the employers and that the problem has become increasingly serious, will the Government inform this Council:*

- (1) *whether the authorities will consider not issuing new employment visas to FDHs who have had more than two employment contracts terminated prematurely within the 12 months prior to their visa applications; if they will, of the details; if not, the reasons for that;*
- (2) *whether it will review and amend the Immigration Ordinance to strictly require FDHs to return directly to their places of origin within 14 days upon premature termination or completion of their contracts with the employers, and to permit employers to monitor if the FDHs have actually left Hong Kong; if it will, of the details; if not, the reasons for that; and*
- (3) *whether it will consider, upon the request of a prospective employer of an FDH and with the consent of the FDH concerned, providing the prospective employer with the information kept by the Immigration Department on that FDH's employment history in Hong Kong (including the places of work and duration as well as the reasons for leaving, and so on, in respect of each of the previous contracts) for reference so as to combat "job-hopping" by FDHs and prevent prospective employers from falling into the traps of*

"job-hopping" FDHs, in order to enhance the protection for employers; if it will, of the details; if not, the reasons for that?

SECRETARY FOR SECURITY (in Cantonese): President, my reply to Mr CHUNG's question is set out below:

- (1) The Immigration Department (ImmD) has all along been processing employment visa applications of FDHs in a rigorous manner. If the applicant has any adverse records or breaches, the ImmD will consider refusing his/her application.

Clause 12 of the Employment Contract for a Domestic Helper Recruited from Abroad (the Contract) provides that in the event of termination of the Contract, both the employer and the FDH shall give the Director of Immigration notice in writing within seven days of the date of termination. A copy of the other party's written acknowledgement of the termination shall also be forwarded to the ImmD. These records will be kept and taken into account by the ImmD in considering any future applications made by the FDH for an employment visa or extension of stay.

Under the prevailing policy, change of employer applications from FDHs in Hong Kong within their two-year contract will not normally be approved except under exceptional circumstances, for example, if the FDH's contract is terminated on grounds of the transfer, migration, death or financial reasons of the ex-employer, or if there is evidence suggesting that the FDH has been abused or exploited. The applicant must provide proof to satisfy ImmD that his/her application meets the above circumstances in order to be approved to change employers in Hong Kong.

Regarding the abuse of premature contract termination arrangements by FDHs, the ImmD has adopted a corresponding measure to strengthen the assessment of employment visa applications of FDHs who change employers repeatedly. The ImmD will, in processing the employment visa applications of FDHs, closely scrutinize their case details such as the number of and reasons for premature contract termination within 12 months with a view to detecting any abuse of

the arrangements for premature contract termination. If the ImmD suspects such abuse, the application will be refused.

From the implementation of the above measure in June 2013 to January 2014, the ImmD received about 40 000 employment visa applications from FDHs, of which 1 372 were suspected of "job-hopping", accounting for 3.4% of all applications. After closely scrutinizing these applications, the ImmD refused 170 of them. Another 158 applications were withdrawn by the applicant or required no further action. The ImmD believes that this measure helps to deter abuse and will review its effectiveness from time to time.

- (2) Clause 7 of the Contract stipulates that on termination or expiry of the Contract, the employer shall provide the FDH with free return passage to his/her place of origin. The rationale behind this requirement is that the employer, who hires the FDH to work in Hong Kong, has the responsibility to pay for the FDH's return passage in order to ensure the FDH's smooth return to his/her place of origin upon the completion or premature termination of the Contract. Otherwise, the FDH concerned may be stranded in Hong Kong owing to the lack of means to travel. The same requirement also applies to other employers who hire foreign workers from overseas to work in Hong Kong under other labour importation schemes. The Administration has no plans to change the prevailing policy.

Although the Contract does not stipulate the form or deadline of the return passage provided by the employer to the FDH, we suggest that the employer provide an air ticket for travelling from Hong Kong to the FDH's place of origin to fulfil the contract requirement instead of giving a cash amount equivalent to the value of an air ticket. Also, to avoid additional losses, employers may consider providing their FDHs a more flexible air ticket, such as one without a specific deadline or one that allows change of travel dates, as there may be unexpected circumstances where the FDH is unable to travel on the date specified on a fixed date ticket (for example, discount tickets).

Unless he/she falls under the exceptional circumstances mentioned in part (1), an FDH working in Hong Kong who wishes to enter into an employment contract with a new employer must leave Hong Kong and submit a new employment visa application to the ImmD. In processing the employment visa application of a FDH to work for another employer after premature contract termination, the ImmD will conduct a movement record check to ensure that the FDH has left Hong Kong before the new visa is issued. If the applicant is suspected to have any adverse records or breaches, including abuse of the employment arrangement for FDHs, the ImmD will consider refusing the application based on individual circumstances.

- (3) Under the FDH policy, the ImmD's primary function is to process FDHs' employment visa applications and to consider whether the applicant fulfils the relevant criteria and the normal immigration requirements. It is not the ImmD's role to provide FDH's background information to prospective employers.

If employers wish to obtain information pertaining to FDHs' previous employment in Hong Kong, they may contact the FDHs' former employers with the consent of the FDH and the former employer, in order to learn more about the FDH's performance. Employers may also refer to the employment visa and entry stamp (or landing slip) on the FDHs' travel document, old employment contracts, and so on. Furthermore, the employment records of FDHs, including the time of employment and reasons for quitting, constitute personal data under the Personal Data (Privacy) Ordinance (Cap. 486). Any persons making a data access request to government departments to access another person's personal data must comply with the requirements stipulated under the Ordinance.

As mentioned in part (1), the ImmD has all along been processing FDHs' employment visa applications in a rigorous manner. If the applicant or his/her employer has any adverse records or breaches, the ImmD will consider refusing his/her application.

MR CHUNG KWOK-PAN (in Cantonese): *President, in fact, the problems concerning FDHs are very closely related to the practice of intermediaries. In*

the recent case about the abuse of an Indonesian domestic helper, the Labour and Welfare Bureau once said that it would formulate new measures and even review the employment system, and consider introducing new licensing terms. Besides, it may even impose heavier penalties on non-compliant intermediaries. I would like to ask about the specific situation about the current monitoring of intermediaries by the Labour Department, and the details of the aforementioned new measures.

PRESIDENT (in Cantonese): Which Secretary will answer? Secretary for Labour and Welfare, please.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I thank Mr CHUNG for his supplementary question. First of all, concerning how to monitor the intermediaries, the Labour Department is of course responsible for licensing. We will take stringent measures against any non-compliant intermediaries, including suspension of licence, prosecution or non-renewal of licence. In fact, last year among the nine intermediaries suspected of non-compliance, six were convicted and the cases involving another two are still being processed in court. We have also stepped up inspection and last year we conducted a total of 1 341 inspections.

Also, as Mr CHUNG has said, in view of the recent abuse cases, the Labour Department and the Bureau have also considered seriously whether there is need for further improving and enhancing the monitoring system. We are considering several measures and have not yet come up with any concrete recommendations.

The measures that we are seriously considering include, first, imposing a number of additional licensing terms, such as banning intermediaries' engagement in any lending activities, so as to prevent them from getting involved in any money disputes as many problems would arise in the process of money lending. Second, the law clearly prohibits intermediaries from charging more than 10% of the first month's salary of a FDH as commission. Third, we are also considering requiring intermediaries to keep in contact and communication with newly employed FDHs who come to Hong Kong for the first time to see if the FDHs concerned have encountered any difficulties.

We are carefully deliberating within the Bureau which of these suggestions is feasible. We will submit information on the feasible suggestions to the Panel on Manpower of the Legislative Council to consult Members and the relevant sector.

MR FRANKIE YICK (in Cantonese): *President, I would like to direct my supplementary question to the Secretary for Security. In part (2) of the main question, Mr CHUNG Kwok-pan asked the Secretary whether the Government will amend the Immigration Ordinance to strictly require FDHs to return directly to their places of origin within 14 days upon dismissal by their employers, so as to increase their cost, thereby combating "job-hopping". However, the Secretary advised employers to provide FDH with an air ticket instead of cash in order to address the problem.*

I believe that the Secretary has missed out the wording used by Mr CHUNG in line 7, 11 and 12 of the main question. In line 7 he used "collaboratively abused" and in line 11 and 12 he said "the FDHs may receive the money for the passage and the intermediaries may charge new employers for placement service". Hence, even if employers follow the Secretary's advice to provide FDH with an air ticket instead of cash, it will only reduce the monetary benefit gained by the FDHs and intermediaries, but cannot stop FDHs from "job-hopping". I would like to ask the Secretary, since I consider that the provision of air tickets to FDHs cannot solve the problem, will the Secretary reconsider amending the Immigration Ordinance to prevent Hong Kong residents from suffering any loss again?

SECRETARY FOR SECURITY (in Cantonese): *President, in order to answer Mr YICK's supplementary question, I have to tell Members some history and I hope that the President will allow me to do so.*

Before 24 March 1987, all FDHs were employed to work in Hong Kong under the condition that they had to work for the specified employer. Before that date, some (only some) FDHs remained in Hong Kong after they had terminated the employment contract with their employers since they were not required to leave Hong Kong within 14 days then. On account of the many problems arising from that, the Government amended the policy on 24 March 1987, imposing another condition of stay, that is, once the employment

was terminated, regardless of whether the employer dismissing the FDH or the FDH voluntarily resigned, the FDH concerned had to leave Hong Kong within 14 days. The purpose of this requirement was to eliminate the chance of "job-hopping" by FDHs, a problem that Mr YICK and Mr CHUNG Kwok-pan are greatly concerned about.

As regards the 14-day limit, we will only consider otherwise under special circumstances, such as the FDH and the employer still have contractual conflicts during this period and need to undergo mediation or lodge a complaint to a relevant government department or tribunal. Under such circumstances, we will consider on a case-by-case basis. There are also exceptions to the 14-day limit, such as the exceptional cases I cited in the main reply. Under those circumstances, we would consider allowing the FDHs concerned to work for another employer; otherwise, FDHs must leave Hong Kong within 14 days. FDHs who do not leave Hong Kong will breach the conditions of stay and have to bear the criminal liability of overstaying. Besides, that will constitute an adverse record if they apply to work in Hong Kong again in future.

I have clearly explained just now that under the Contract, it is the responsibility of the employer to provide an air ticket to the FDH to go back to his/her place of origin. Therefore, I have suggested that employers provide air tickets instead for cash because if FDHs get the cash, the problems cited by Mr YICK can easily arise.

I believe we are aware that many air tickets are non-refundable and some cheaper tickets do not allow the change of the departure date and are non-refundable. If an employer provides an FDH with a ticket that does not allow the change of the departure date, problems may arise for the employer. Since FDHs can remain in Hong Kong for 14 days, and if due to some unforeseeable incidents, an FDH cannot leave Hong Kong at the time and date specified on a ticket, the employer would have to provide another ticket. That is what I mean when I make the above statement. If an employer provides a non-refundable ticket, the FDH has to leave Hong Kong in all circumstances no matter what; second, if for whatever reasons the FDH cannot use the air ticket provided, the employer cannot get a refund. That was why I give such an advice.

As a matter of fact, it is not that the 14-day limit had been unchallenged. After the formulation of this policy, it was challenged by a judicial review, and

the case was heard before the Court of First Instance and the Court of Appeal. The Court of Appeal subsequently granted leave for the case to be brought to the Privy Council in the United Kingdom on the basis of the situation at that time. Although there was little chance that leave to appeal was granted but the Court of Appeal granted anyway. On 27 June 1988, the Privy Council in the United Kingdom ruled that the Government's new policy, including requiring FDHs to leave Hong Kong within 14 days, was reasonable and lawful. That is why this policy is still in force today.

Although various sectors in society have different opinions about this two-week limit rule, the Administration thinks that this requirement can strike a balance between the interest of employer and employee, and can also effectively combat various irregularities that may arise.

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

MR FRANKIE YICK (in Cantonese): *President, I think the Secretary has not answered my supplementary question. I thank the Secretary for the information provided, but I am saying that providing air tickets to FDHs cannot solve the problem of FDH collaborating with the intermediary cited in the main question, as even if the air ticket is non-refundable, the intermediaries can also give money to FDHs. Hence, the problem will not be eradicated, and it can only be solved by amending the legislation.*

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

SECRETARY FOR SECURITY (in Cantonese): We require FDHs to leave Hong Kong within 14 days no matter under what circumstances. Besides, I have also indicated in the main reply that when a FDH applies to come to work in Hong Kong again, we will conduct a movement record check to ensure that the FDH has left Hong Kong before issuing a new visa. In other words, the aim of our policy is to require an FDH to leave Hong Kong within a reasonable period of time, that is, two weeks, upon termination or expiry of the Contract.

It does not matter if the situation described by Mr YICK may or may not happen, the FDH concerned must leave Hong Kong within that period. As regards immigration control, if a person is allowed to stay in Hong Kong for a certain period, upon the expiry of that period, he/she cannot remain in Hong Kong unless he/she has the permission of the Director of Immigration. This is the power bestowed upon the Director under the Immigration Ordinance and we have taken full advantage of this power to formulate this policy.

DR PRISCILLA LEUNG (in Cantonese): *President, there are inevitably some black sheep among FDHs and intermediaries, and we must try our best to stop them. As far as I know, one of the reasons why FDHs abuse and take advantage of this system once they have arrived in Hong Kong is that they are deeply in debt. The charge of intermediaries in Hong Kong is not that high, the amount is no more than \$400, but the intermediaries in the country to which FDHs belong charge a fee equivalent to six months' salary of FDHs, which is well over \$10,000. When my FDH told me about the charge, I could not believe my ears. Therefore, I would like to ask if the Government can make a more desirable agreement with the countries to which the FDHs belong, so as to prevent the intermediaries from reaping colossal profits in this respect. I consider this a serious problem.*

PRESIDENT (in Cantonese): Which Secretary will answer? Secretary for Labour and Welfare, please.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I thank Dr LEUNG for raising this supplementary question. All along we have shared Dr LEUNG's concern as we believe that the problem should be dealt with at source, that is, before the FDH leave their country. In the case of Indonesian domestic helpers, they were already in debt before they leave Indonesia, and such debts are basically intermediary charges and training fees. Earlier, in response to the views of various parties, we have made great efforts to negotiate with the Indonesian authorities and they have lowered the charges slightly to about \$13,500 at present as compared to \$18,000 before. We can imagine that to repay the charge plus the interest, the FDHs basically have no salary for the first six months after coming to Hong Kong. We are especially concerned about this situation.

Therefore, we have discussed on many occasions with the high echelons concerning this issue, and we have seized every opportunity to express our concern in this respect to our Indonesian counterparts. We have also repeatedly relayed the problem to the high echelons of the Indonesian government through its Consulate General in Hong Kong. Therefore, we are constantly trying to get the message across, telling them that they should minimize the intermediary charges and training fees so that their nationals do not have to bear heavy debts when they work abroad.

Recently, during the visit of the Indonesian minister responsible for employment protection and arrangements to Hong Kong, I also took advantage of the opportunity to express my concern and presented to him a very bold recommendation, that is, the Indonesian government should consider the feasibility of providing loans to its people, so that they do not need to take out loans from intermediaries, finance companies or banks. The advantage of loans provided by the government is that the repayment period can be extended and the interest rates may also be lowered, which is similar to our student loans. I have presented this recommendation but we have to respect the Indonesian authorities' decision, as after all this is their national policy. But the Indonesian side has immediately agreed to consider. I totally agree that this is the source of the problem which should be dealt with.

DR HELENA WONG (in Cantonese): *President, the cases of FDHs being abused have revealed many problems, including inadequate government supervision of intermediaries. There are only four officers to carry out inspection. I wonder what improvement the Government can make. We are concerned about what can be done to protect the employer's right and interest but we have not yet heard anything about how to effectively help employers of FDHs in Hong Kong ...*

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

DR HELENA WONG (in Cantonese): *... to prevent "job-hopping" by FDHs. For example, in respect of the immigration control mentioned earlier, the ImmD ...*

PRESIDENT (in Cantonese): Dr WONG, please raise your supplementary question instead of making further arguments.

DR HELENA WONG (in Cantonese): *My supplementary question is: The policy only attaches importance to ensuring that FDHs have left Hong Kong but pays no attention to where they actually go, will this create a loophole facilitating their "job-hopping" within a short period? FDHs may well go to Macao or Shenzhen, stay a while and then return to Hong Kong.*

SECRETARY FOR SECURITY (in Cantonese): President, in accordance with Hong Kong's immigration law, anyone who is not prohibited or restrained by law can freely leave Hong Kong. During their employment in Hong Kong, FDHs have the legal status of Hong Kong residents, though not permanent residents, and their freedom of entry and exit is protected by the Basic Law. We cannot specify the places that they have to go after leaving Hong Kong, such as their places of origin, as it is prohibited under the law. Therefore, we cannot specify that the FDHs have to return to or go to certain places after the termination of their contract with their employers. As long as they do not overstay, they are allowed to leave Hong Kong to any place voluntarily and legally under the law. We must allow them to do so as every Hong Kong resident's freedom of entry and exit is protected by law.

PRESIDENT (in Cantonese): This Council has spent almost 24 minutes on this question. Fifth question.

Regulation of Taxi Drivers Using Several Mobile Telephones While Driving and Offering Discounts on Taxi Fares

5. **MR WONG KWOK-HING** (in Cantonese): *President, it is learnt that quite a number of taxi drivers offering discounts on taxi fares (commonly known as "the discount gangs") place several smart phones on the dashboards of their taxis to facilitate communication with passengers who need taxi-call service. Such taxi drivers use mobile phones by touching or sweeping the screens of their mobile phones with their fingertips (operating mobile phones with fingertips) while driving. Many members of the taxi trade and passengers have expressed*

concern that as it is easy for the driver to get distracted under such circumstances, traffic accidents are prone to occur, posing danger to taxi passengers and other road users. The Road Traffic (Traffic Control) Regulations, however, only prohibit drivers from using a mobile phone by holding it in their hands or between their heads and shoulders while driving, but not from operating mobile phones with fingertips while driving. Nor is there any restriction on the number of mobile phones which may be placed by a driver on the dashboard of a vehicle. In this connection, will the Government inform this Council:

- (1) of the respective numbers of taxi drivers prosecuted in the past three months for offering fare discounts to passengers and for using mobile phones while driving;*
- (2) in each of the past five years, of the number of taxi drivers who were convicted within the same year for using mobile phones while driving and offering fare discounts to passengers, the number of traffic accidents involving taxis which occurred when their drivers were using mobile phones, and whether police officers were deployed to disguise as customers (commonly known as "undercover operations") for taking law-enforcement actions against discount gangs; if so, of the number of taxi drivers arrested during undercover operations; and*
- (3) whether the authorities stepped up law-enforcement actions in the past three months against taxi drivers placing several mobile phones on the dashboard, and of the number of such taxi drivers prosecuted for careless driving; whether the authorities will consider amending the legislation to stipulate the maximum permitted numbers of mobile phones to be placed on the dashboard and used by the driver, so as to enable police officers, members of the taxi trade and other drivers to act in accordance with the law; if they will, of the legislative timetable (including consultation with the taxi trade)?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, my reply to the various parts of the question raised by Mr WONG Kwok-hing is as follows:

- (1) According to the "soliciting" behaviour prescribed under regulation 40 of the Road Traffic (Public Service Vehicles) Regulations, if any taxi driver or his/her representative in any manner attracts or endeavours to attract any person in order to induce such person to make use of his/her vehicle, he/she commits an offence and is liable to a fine of \$10,000 and imprisonment for six months. Any taxi driver who offers fare discounts on his/her own initiative to induce passenger(s) to make use of his/her vehicle is engaging in "soliciting" activities.

Separately, under regulation 42(1)(g) of the Road Traffic (Traffic Control) Regulations, a driver shall not, if a motor vehicle being driven by him is in motion, use a mobile telephone while holding it in his hand or between his head and shoulder. Offenders are liable to a fine of \$2,000.

Based on the information provided by the police, the respective numbers of taxi drivers prosecuted for "soliciting" and using mobile phones while holding them in their hands or between their heads and shoulders when driving from October to December 2013 are set out at Annex.

- (2) The police have all along been taking vigorous enforcement actions against taxi malpractices through various operations. They include having police officers disguising as passengers (commonly known as "undercover operations") to combat "soliciting" activities by taxi drivers. The police, however, do not maintain figures on these operations or on the related arrest. Apart from law enforcement, the Transport Department (TD) from time to time reminds the taxi trade of the need to abide by the law. It also reminds passengers through publicity that they should pay taxi fares according to the meter as required by the law.

The police do not have figures on prosecution and conviction of taxi drivers who have committed both offences of using mobile phones while holding them in their hands while driving and "soliciting" in the same year. The police also do not have figures on traffic accidents involving taxis which occurred when their drivers were using mobile phones by holding them in their hands.

- (3) As mentioned above, there are legal provisions prohibiting the use of mobile phone by a driver while holding it in his hand or between his head and shoulder while driving. A driver may, depending on the actual circumstances of a case, commit an offence of "dangerous driving" or "careless driving" under the Road Traffic Ordinance, if his driving behavior is adversely affected, or cause traffic accident, by his using of mobile phone or other telecommunications equipment through "swiping". Simply placing of mobile phones on the dashboard does not contravene any legislation, provided that driving safety is not undermined.

It is our preliminary understanding that the regulatory framework on the use of mobile phones by drivers during driving in major developed countries is similar to the one adopted in Hong Kong. In countries like the United States, Canada, Germany, France, the United Kingdom, Japan and Singapore, there are legal provisions prohibiting the use of hand-held mobile phones by drivers while driving. Such provisions do not prohibit the use of mobile phones through hands-free devices or the operation of a mobile phone through "swiping".

From the road safety perspective, drivers should avoid being distracted while driving. As such, it is not advisable to use mobile phones or other telecommunications equipment while driving. However, taking into account the practical needs of drivers, such as to make phone calls in case of emergency and necessary situations, the current legislation only prohibits the use of hand-held mobile phone or holding the phone between one's head and shoulder while driving.

The use of mobile phones has become very popular. Increasingly, the public opt to place hiring orders for taxi or goods vehicle services through mobile phone application software. We agree that current legislation should keep pace with the latest development and be reviewed from time to time having regard to technological advancement and risks assessment. If the community considers it necessary to explore the practicability of further tightening up the control over the use of mobile phones while driving, we have to carefully assess its impact on drivers, not only taxi drivers but also

all commercial vehicle and other drivers. Also, we have to consider the enforcement and the related issues in order to strike a right balance among road safety, social needs and the use of technology.

Having regard to the community's concern about the use of mobile phones and other telecommunications equipment by drivers while driving, the Government will collect and analyse relevant information, such as the correlation between the use of mobile phones through "swiping" and the number of mobile phones placed inside vehicles against the occurrence of traffic accidents. I have already asked the police to start collecting data regarding the number of mobile phones or telecommunications equipment placed in vehicles involved in traffic accidents with personal injuries for further analysis.

At the same time, we will continue to monitor the relevant overseas research findings and legal requirements. We will also work closely with the Road Safety Council to enhance the education and publicity work, and will invite the Council to study the issue further.

Annex

	<i>October 2013</i>	<i>November 2013</i>	<i>December 2013</i>
Number of taxi drivers prosecuted for "soliciting"*	24	6	12
Number of taxi drivers prosecuted for using mobile phones while holding them in their hands or between their heads and shoulders when driving	68	66	69

Note:

* Including prosecutions against "soliciting" by offering discounts and other manner.

MR WONG KWOK-HING (in Cantonese): *President, before today's Council meeting started, a group of taxi operators from the Motor Transport Workers*

General Union had presented their petition to the Legislative Council regarding this issue, asking the Government to make legislative amendment to plug the loophole. In part (3) of the main reply, the Secretary has explicitly admitted that the law does not lay down any restriction on the number of mobile phones which may be placed by a driver on the dashboard, nor the operation of mobile phones through "swiping". That means such practice does not violate the law and is free from regulation. Besides, in the last part of the main reply, the Secretary advised that relevant data will be collected and analysed to see if there is a correlation between the abovementioned situation and the occurrence of traffic accidents. As such, may I ask the Secretary through the President whether the Government will not do anything until the day someone died as a result? Will the Government wait until someone dies before it is willing to formulate the timetable for the relevant legislative amendment? In fact, I have raised this query in part (3) of the main question but the Secretary has not answered. Therefore, may I ask the Secretary whether he will not do anything until one day someone dies as a result?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):

President, certainly we do not want to have any fatal traffic accidents. As what I have said in the main reply, we understand the concern of the community about road safety and driving safety. The existing legislation has laid down relevant requirements to regulate dangerous driving or careless driving. For regulation on the use of mobile phones by drivers while driving, as I have mentioned just now, other developed countries and places only prohibit the use of hand-held mobile phones or holding the phone between one's head and shoulder while driving, but not the use of mobile phones through hands-free devices or the operation of a mobile phone through "swiping".

We understand that it is common for drivers to use mobile phones and smart phones. We really need to pay attention to the impact of technological development on road safety. However, to ascertain whether this will have any impact on road safety, we must have concrete data to prove their correlation. That is why I mentioned just now that we are now asking the police to collect the relevant data for specific analysis. Besides, in further tightening the control, we must understand that such control is not only restricted on taxi drivers, but applicable to all drivers.

MR WONG TING-KWONG (in Cantonese): *It has recently been reported that some taxi drivers form their own fleet to compete for customers by setting up discount groups through some mobile apps. May I ask the Secretary whether such practice is in breach of the law; and if so, how the authorities can effectively crack down on such activities?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I have also mentioned in the main reply that under the existing law, if any taxi driver or his/her representative in any manner (including offering fare discounts) induces passenger(s) to make use of his/her vehicle, he/she is engaging in "soliciting" activities and commits an offence. We often call on passengers to pay taxi fares according to the meter as required by the law.

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

MR WONG TING-KWONG (in Cantonese): *President, just now I have not mentioned about offering discounts. I just said that some taxi drivers have formed groups by using mobile apps. Is it true that such practice does not contravene the law as long as the drivers charge fares according to meter?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, under the present legal system, drivers are of course allowed to provide on-call taxi services. If passengers hire taxi services by contacting trade operators through smart phone application software and they pay fares according to meter, certainly they do not break the law.

MR FRANKIE YICK (in Cantonese): *President, the taxi trade is very concerned about the problem because this involves road safety. Mr WONG Kwok-hing asked the Secretary whether legislation will be amended to restrict the number of mobile phones which may be placed on the dashboard and used by a driver; and the Secretary advised in reply that as no developed countries have imposed any regulation in this regard, the Government will continue to collect data for study. I would like to share with the Secretary my personal experience.*

Once I rode on a taxi and the driver placed about six mobile phones on the dashboard. During the trip, he received hiring orders and wrote down the surname and location of the passengers. As a Legislative Council Member, I of course said to him, "Buddy, this is very dangerous. Can you stop doing this?" In reply, he asked me, "Sir, which legal provision have I breached?" May I ask the Secretary how I should respond next time?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, it is true that the existing law only prohibits the use of mobile phone by a driver while holding it in his hand or between his head and shoulder. Nonetheless, no matter whether the driver is using a mobile phone or not, if any of his behaviour has constituted dangerous driving and hence caused traffic accident, he has definitely contravened legislation on road safety or other aspects. This has nothing to do with his use of mobile phone.

Mr YICK shared his personal experience about witnessing a driver using several mobile phones and I have also learnt about this situation from newspapers or friends. If there is strong view in the community that we should tighten control on the number of mobile phones placed in a vehicle ... of course we have to conduct consultation on whether it is not regarded as a dangerous act if only one or two mobile phones are placed. As the use of mobile phones may also constitute a dangerous act or adversely affect a driver's driving behaviour, we need to review the issue in a comprehensive manner. We have started to collect data through the police, with a view to ascertaining whether the use of mobile phones or other telecommunications equipment that apply the latest technology is one of the significant factors causing the numerous traffic accidents and hence should be faced squarely.

MR TANG KA-PIU (in Cantonese): *President, in fact the taxi trade or taxi drivers have indicated that if no discount is offered, many night-shift taxi drivers will refuse to work because it makes no difference between offering discounts and "soliciting" by placing several mobile phones in the taxi. At present, the discount gangs or the problem of "soliciting" are particularly rampant during the night shift. Have the authorities assessed how many night-shift taxis are left idle due to the lack of taxi drivers, thus affecting the services to the public? Passengers are unable to hire a taxi even in busy urban areas because all*

night-shift taxis have already got their orders. May I ask the Secretary whether he has made assessment on the situation in this regard?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the police have been carrying out undercover operations to combat the overcharging of fares by taxi drivers or other unlawful acts such as inducing passengers to make use of his/her vehicle. These "soliciting" activities, be it offering fare discounts or other manner, are unlawful acts. The Government revised the taxi fare structure in 2008 and introduced the new structure of raising short-haul fares and lowering long-haul fares. That means the actual fare according to the meter has decreased for long-haul trips. Based on the observation of both the TD and the trade, with the introduction of the new fare structure of raising short-haul fares and lowering long-haul fares, discount gang activities have probably diminished. I dare not say that such activities have totally disappeared. Both the police and the TD will keep an eye on the situation from time to time. We often remind the industry to abide by the law and charge fares according to meter. Passengers are also reminded to pay taxi fares according to meter as required by the law.

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

MR TANG KA-PIU (in Cantonese): *The Secretary has not answered my supplementary question, that is, whether the authorities have assessed how many night-shift taxis are left idle because no drivers are willing to take up the night shifts.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we do not have the information about the operation or other aspects of day-shift and night-shift taxi drivers. But I can provide some supplementary information on the number of taxi drivers prosecuted for "soliciting" activities. Such number was 27 in 2011, 51 in 2012 and 156 in 2013. From these figures, we can see that the police have stepped up their efforts in combating the problem.

MR YIU SI-WING (in Cantonese): *Apart from the inappropriate use of mobile phones and "soliciting" activities, cases of "black cabs" in recent years cannot be eliminated. Their unlawful acts, including overcharging, "soliciting", refusing hire, robbing passengers of their luggage, and so on, have directly damaged the reputation of Hong Kong as an international tourist city. May I ask the Secretary what counter measures were introduced by the Government last year to reduce the abovementioned unlawful acts, and whether the authorities will consider taking this opportunity to introduce legislative amendment?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the law has already laid down clear provisions regulating the acts of overcharging and "soliciting", as well as the corresponding penalties. In view of the situation over the past period of time ... I remember I had replied to similar questions in the Legislative Council before ... the Government, including the police, is very concerned whether there is an increasing trend of such figures. Regarding the impact on tourists, some unscrupulous drivers may take advantage of the lack of understanding of tourists about the local situation and overcharge fares or take a less direct route. As such, the police have been carrying out undercover operations and stepping up efforts in combating the problem in other aspects. The TD has also strengthened liaison with the industry as well as publicity and education. We will keep a close eye on the trend of such figures and will certainly review, when necessary, whether the existing legislation has adequate deterrent effect.

MR KWOK WAI-KEUNG (in Cantonese): *The presence of "20% discount cabs" has already made the industry panic. The industry accuses the Government for failing to exert itself in combating the "20% discount gangs", thus allowing the problem to go rampant. In the main question of Mr WONG Kwok-hing, it is suggested that legislation be enacted to regulate the number of mobile phones to be placed on the dashboard. The reason is that drivers with more mobile phones placed in the vehicle are more likely to be the head of the gang and should be targeted at. I once rode on a taxi where the driver placed eight to 10 mobile phones on the dashboard. These mobile phones do not only block the dashboard but also the driver's sight; as such, drivers cannot even see the road clearly. The mobile phones have affected the driver's judgment to road situation and the performance of his vehicle. Is it true that this has already*

posed danger to road users and justifies regulation by legislation instead of collecting the actual numbers ...

PRESIDENT (in Cantonese): Mr KWOK, please ask your supplementary question in a clear and simple way.

MR KWOK WAI-KEUNG (in Cantonese): *Alright. My supplementary question is whether placing mobile phones on the dashboard and in front of the windscreen in a vehicle which has blocked drivers' sight and posed danger already justifies regulation.*

PRESIDENT (in Cantonese): Would Members please refrain from asking a question that is as long as containing more than 40 characters in Chinese?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, according to the regulatory framework referred to in the main reply just now, a taxi driver who offers fare discounts to induce passenger(s) to make use of his/her vehicle has, irrespective of whether he is using a mobile phone or how many mobile phones he has placed in the vehicle, committed the offence of engaging in "soliciting" activities. The correlation between mobile phones and driving safety is our concern, but we must first ascertain how to decide when safety significance is caused and hence restriction is needed.

As I have mentioned just now, currently overseas countries do not restrict the use of mobile phones through hands-free devices or the operation of a mobile phone through "swiping". In the future, technological advancement may allow users to operate a phone with only their mouths instead of their hands. We have to examine the level of risk posed to drivers while driving by such mode of operation, having regard to technological development. Normally speaking, if several mobile phones are placed on the dashboard and the driver often keeps an eye on these phones, he will indeed be distracted and affected. However, if regulation is to be imposed by way of legislation, we must make a balance by ascertaining the correlation carefully and making reference to overseas experience.

PRESIDENT (in Cantonese): This Council has spent more than 23 minutes on this question. Last question seeking an oral reply.

Illegal Felling and Theft of *Aquilaria Sinensis*

6. **MR LEUNG CHE-CHEUNG** (in Cantonese): *President, it has been reported that the prices of Aquilaria sinensis (incense trees), an endangered species, and the resin secreted by them have been rising incessantly in recent years, resulting in many cases of illegal felling and theft of incense trees in Hong Kong. For instance, more than a hundred incense trees at Pak Ngan Heung, Lantau have all been felled in the past few years. It is learnt that lawbreakers first make cuts on the trunks of incense trees to stimulate secretion of resin and then return to collect the resin and fell the trees for profit. In this connection, will the Government inform this Council:*

- (1) *of the number of incense trees illegally felled in the past five years; if such figure is not available, of the reasons for that; while the Government has indicated that a territory-wide survey for incense trees is neither practicable nor useful, whether the authorities will consider afresh collecting such data to facilitate formulation of a policy for better protection of incense trees;*
- (2) *of the number of persons arrested for illegal felling of incense trees in the past five years and the highest penalty imposed on the convicted persons; whether the Government will increase the penalty for illegal felling of trees so as to enhance the deterrent effect; as cases of illegal felling of incense trees happen time and again, whether the authorities have reviewed the effectiveness of the relevant protection measures; whether it has made reference to the measures taken, legislation enacted, and penalties imposed by overseas authorities for curbing similar cases; if it has, of the details; and*
- (3) *whether it has considered restoring the damaged habitats of incense trees, including the planting of incense tree seedlings; if it has not, of the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, on the different parts of the question raised by Mr LEUNG, our reply is as follows:

(1) and (2)

"CHEN Xiang" is a valuable traditional Chinese medicine, derived mostly from incense trees growing in the Asian tropics. The Incense Tree growing in Hong Kong belongs to another species of the genus *Aquilaria*. It produces a resin that has been used as a substitute of "CHENG Xiang". The native Incense Tree is widely distributed in Hong Kong, and mostly found in lowland broadleaf forests or in fung shui woods behind rural villages. The Agriculture, Fisheries and Conservation Department (AFCD) does not maintain a record of the population of Incense Trees in Hong Kong.

Under the Forests and Countryside Ordinance (Cap. 96), any person who unlawfully fells or destroys any trees or growing plants on Government land is liable on conviction to a fine of \$25,000 and imprisonment for one year. Depending on the circumstances of individual cases, the police may initiate prosecutions under the Theft Ordinance (Cap. 210), which imposes a heavier penalty, in a bid to achieve a stronger deterrent effect. Any person arrested and charged with theft is liable to a maximum penalty of imprisonment for 10 years.

Currently, offenders involved in illegal felling of Incense Tree were mainly prosecuted for criminal offences on theft, criminal damage, possession of offensive weapon, going equipped for stealing, and so on, and, where appropriate, the police may apply for an enhancement of sentence under the Organized and Serious Crimes Ordinance (Cap. 455). Over the past five years (2009 to 2013), the maximum penalty convicted involving Incense Tree is four year and three months' imprisonment. Detailed information on recent criminal cases handled by the police involving Incense Trees in the recent nine years is provided in Table 1.

Table 1: Cases involving Incense Trees in Recent Years

<i>Year</i>	<i>Number of cases</i>	<i>Number arrested</i>	<i>Number of prosecutions</i>	<i>Weight of Wood and Estimate Number of Trees</i>
2005	43	92	34	202.28 kg and 134 nos.
2006	20	33	16	57.93 kg and 34 nos.
2007	15	10	5	26.16 kg and 42 nos.
2008	20	11	5	28 kg and 1 no.
2009	15	5	2	1.168 kg and 5 nos.
2010	19	19	9	14.265 kg and 7 nos.
2011	72	65	28	91.225 kg and 210 nos.
2012	67	64	29	70.509 kg and 99 nos.
2013	96	41	21	133.518 kg and 168 nos.

All *Aquilaria* species, including the native Incense Tree, are Appendix II species under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586). Under the Ordinance, any person who exports an agarwood specimen or possesses a live plant of wild origin for commercial purposes must obtain a permit issued by the AFCD, while the import of an agarwood specimen requires a valid export licence issued by the exporting country. The maximum penalty for violation of the licensing requirements of Appendix II species under the Ordinance is a fine of \$500,000 and imprisonment for one year. In the past five years, there were 17 cases of seizure of illegal import and export of agarwood specimens.

The AFCD will closely liaise and co-operate with the police in combating against illegal felling or pruning of Incense Tree. Imposing a heavier penalty on such illegal activities could also provide a stronger deterrence, and enhance the protection of Incense Trees. Patrols will also be stepped up at sites of illegal tree-felling.

- (3) Many of the illegally felled areas are already densely vegetated, and in addition, some of the areas fall within private lots. As such, it may not be appropriate for the Government to replant Incense Tree in those areas. We found it more appropriate to plant the seedlings of Incense Trees at select suitable sites within the country parks. The AFCD would produce seedlings of Incense Trees and plant them

in different country parks, to assist in the propagation of this species in Hong Kong. The number of seedlings planted in the recent years is as shown in Table 2. Nearly ten thousands of them have been planted on average every year.

Table 2: Number of seedlings of Incense Trees planted in country parks

<i>Year</i>	<i>Number of seedling planted</i>
2009	9 000
2010	8 710
2011	9 800
2012	11 000
2013	10 600

Protection of endangered species in Hong Kong, including the Incense Tree, relies on the concerted effort of the public and the Government of Hong Kong. Relevant departments will strengthen publicity and education on such. I would also like to appeal to the public to reduce the purchase and use of Incense Tree and its products. The public, including villagers and people going to the countryside, is advised to report cases of illegal tree-felling to the police as soon as possible where appropriate. This would help the police in taking actions in combating these illegal activities.

MR LEUNG CHE-CHEUNG (in Cantonese): *President, incense trees are indeed very precious, and so are other plant species in Hong Kong. Therefore, the Government has been very concerned about illegal felling of incense trees and has even taken enforcement actions against some offenders, but such actions have not been effective.*

Some villagers have told me that law-enforcement agencies can only take arrest action when the suspect is found with tools for illegal felling of trees. Therefore, the authorities have not been successful in prosecuting people for illegal felling of incense trees over the years, and incense trees in Hong Kong have been badly damaged as a result. I would like to ask the Secretary whether the Government will establish an inter-departmental working group which

includes not only the Environmental Bureau, but also other government departments, such as the Marine Police and the AFCD, so as to protect this endangered plant species with concerted efforts.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Mr LEUNG for the supplementary question. The Government attaches much importance to protecting incense trees and other plant species. I have some figures to share with Members. Over the past three years from 2011 to 2013, there were 60-plus to 90-plus cases involving incense trees each year on average; with 65 persons arrested in 2011, 64 in 2012 and 41 in 2013. As we can see, the number of persons arrested each year has been a double-digit figure. As for the number of successfully prosecuted cases, there were 28 in 2011, 29 in 2012 and although not all cases in 2013 have been heard, the number of successfully prosecuted cases has already reached 21 so far. Furthermore, in the cases convicted in 2013, the imprisonment terms imposed ranged from two to four years. Therefore, the penalties imposed have been rather heavy and the number of successfully prosecuted cases is considerable. However, we are still keen to strengthen our efforts in protecting plant species. We will explore ways to enhance co-operation between the AFCD and the police in order to combat illegal felling activities.

MR TAM YIU-CHUNG (in Cantonese): *President, the Secretary said that the Government has attached much importance to protecting the species. I would like to ask the Secretary whether the Government would consider setting up a data bank, stepping up patrols to combat illegal felling and replanting, in phases, of incense trees where they were felled in order to protect this species.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Mr TAM for raising the supplementary question. Basically, the AFCD has established a data bank of all species in Hong Kong and various groups (including schools) have paid visits there. We can step up promotion efforts to enhance public awareness of our work in this area.

Secondly, insofar as patrolling is concerned, and as I have pointed out in my reply to Mr LEUNG's question just now, the AFCD and the police will review

the matter and step up their joint efforts in combating illegal felling of incense trees where appropriate.

Regarding the third part on replanting, as I have mentioned in my main reply, at present or in recent years, many illegal felling of incense trees have taken place within private lots behind rural villages recently and such areas are usually densely vegetated, it is technically difficult to replant trees. Given the overall situation of Hong Kong, we consider it more appropriate to replant trees at suitable sites within the country parks. That is why over the past five years, we have replanted nearly ten thousand seedlings of incense trees on average every year in different parts of Hong Kong, so that we can cultivate more of this species.

MR ALBERT CHAN (in Cantonese): *President, one of the reasons why incense trees are felled is that the resin secreted can be used as a medicine, which is valuable. Felling of these trees actually takes place in cycles. Very often, people will first make cuts on a tree and after three to five months when the secreted resin accumulates, they will return to collect the resin, which is worth \$50,000 to \$100,000. Therefore, the Government should formulate a corresponding plan to arrest illegal fellers because reliance on public reporting of the offence will not be effective.*

Will the Government consider designing an advanced surveillance system to alert the authorities concerned when some incense trees have been cut, so that deployment can be made to catch the offenders when they return to get the resin? When the offenders take action, the surveillance system will alert the police, so that they can be caught red-handed. In this way, illegal felling of incense trees can be controlled and reduced and the offenders will be brought to justice. Will the Secretary consider designing special ways to arrest people for illegal felling of incense trees?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Mr CHAN for raising the question. Over the past few years, other Members have put forward related questions and proposals, and the Government have given them due consideration.

First of all, Members have to understand that as incense trees are widely distributed in Hong Kong, it is difficult to keep all the areas under surveillance with the help of technology. Second, as the Honourable Member has pointed out, some people first make cuts on the trunk of incense trees and then return later to collect the secreted resin. However, recently there are signs that such practice has changed, for the offenders are probably aware that we will step up patrols in the areas which will make illegal felling more difficult. Hence, they have changed their practice. They will go to places where incense trees are planted, and when they find resin secreting naturally from the trees, they will fell the trees directly. They will not take two steps by making cuts on the trees first. Therefore, after learning that we will step up patrol, they will act swiftly and in a more organized manner.

We have to understand that the situation is constantly changing and we will monitor the situation closely. In fact, we had discussed about taking enforcement actions with the help of technology. In the end, however, given the wide distribution of incense trees, we consider it difficult to keep those trees under surveillance by technical means, and the installation of such equipment may not be the most effective solution after all. Under the present circumstances, we believe that heavier penalties and more frequent patrols in the selected areas will be effective. Meanwhile, we encourage everyone concerned, including villagers and hikers, to report to the police of suspected cases of illegal tree-felling where appropriate. That would also be an effective way of combating such illegal activities.

MR ALBERT CHAN (in Cantonese): *President, in my previous question, I urged the Secretary to conduct studies and consider the proposal. In the past, I have seen dozens of felled incense trees. Within an area of 20 or 30 metres of my residence, an incense tree was felled two weeks ago.*

The Secretary said just now that nowadays, the law-breakers would fell incense trees when they saw resin secreting naturally. However, that is only part of the truth. Most of the incense trees felled are old trees 30 to 40 years of age. They often make cuts on the tree trunk for the resin to accumulate because that is the most cost-effective way to obtain resin of the highest value. Therefore, if the Government would install simple equipment, such as ...

PRESIDENT (in Cantonese): Mr CHAN, I think the Secretary understands your question and proposal.

MR ALBERT CHAN (in Cantonese): *No, President, he has just rejected what I said.*

PRESIDENT (in Cantonese): The Secretary has replied. If you are not satisfied with his reply, you can follow up through other channels.

MR ALBERT CHAN (in Cantonese): *No. I hope the Secretary can consider the specific circumstances. I believe I am familiar with this issue and so I hope the Secretary can review the matter with his colleagues to ensure that Hong Kong will not become a city of incense tree felling.*

PRESIDENT (in Cantonese): Mr CHAN, the Secretary has heard your proposal.

IR DR LO WAI-KWOK (in Cantonese): *President, as agarwood is a valuable commodity, illegal felling of incense trees in Hong Kong has aroused concern. I think the Secretary has given us a correct explanation just now and so I support the initiative of the Government to plant incense trees in the country parks.*

However, incense trees are not the only precious plant species in Hong Kong. When we were children, we often saw beautiful plants such as Enkiansus in the countryside of Hong Kong which have become rare now. Therefore, I would like to ask the Secretary whether the Government has any comprehensive policy and plans to plant various precious plants. Can comprehensive written information be provided after the meeting?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Ir Dr LO for asking the question. After a recent discussion with our colleagues from the AFCD, I become aware that apart from the problem of incense trees, we have a reduction in the vegetation of Enkiansus in recent years. Therefore, we

would discuss with the AFCD on policies and planting initiatives in country parks and decide whether more positive actions should be taken in response to the situation. (Appendix I)

MR PAUL TSE (in Cantonese): *President, from the main reply of the Secretary, I learn that offenders can be prosecuted under various Ordinances such as the Forests and Countryside Ordinance. However, as that Ordinance is mainly concerned with tree-felling, it is rather difficult to adduce evidence. Another example is the Protection of Endangered Species of Animals and Plants Ordinance which is only concerned with offences in relation to the import and export of animals and plants. When the authorities enforce the law, they often institute prosecutions in an indirect manner. For example, when a person is arrested for under skirt photo-taking, as there is no such offence under the legislation, that person will only be prosecuted for loitering. At present, the police can only charge offenders of illegal tree-felling for theft, criminal damage and possession of offensive weapon. This is a very indirect way to enforce the law.*

While the Secretary has told us that the maximum penalty of convicted cases is imprisonment for four years and three months, I believe that was the sentence imposed in a case of theft, was it not? I would like to ask the Secretary to provide us with information on the average length of imprisonment. Apart from this case in which a particularly long period of imprisonment has been imposed, is the penalty on illegal felling of incense trees heavy enough and is it necessary to raise the maximum penalty and amend the laws?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): *President, I thank the Honourable Member for the question. As I said earlier, illegal felling of incense trees is basically an organized activity now because agarwood is a valuable commodity. Therefore, we have been instituting prosecutions under the Theft Ordinance in the past few years. We consider the approach appropriate.*

Regarding the situation in 2013, there are a total of 96 cases of incense tree felling, with 41 persons arrested and about 10 successfully prosecuted cases. The shortest term of imprisonment is two years and the longest, about four years.

The sentences imposed recently have been heavier. Therefore, I think the two to four years' imprisonment have reflected the importance that the authorities have attached to the matter.

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

MR PAUL TSE (in Cantonese): *President, considering the figures, the highest number of cases and the highest number of trees felled (168) were recorded in the year 2013, while the weight of wood taken was heaviest in 2005. The figures seem to reflect that the situation is becoming more serious. The effectiveness of the measures and penalties, as mentioned by the authorities, have not been reflected by the figures.*

In response to the question which I asked just now, the Secretary has merely read out some figures. However, I really want to ask the Secretary: Given the present circumstances, will the authorities amend the laws, enact specific legislation against illegal felling of incense trees and illegal possession of agarwood, so that the police do not have to institute prosecutions under the charges for theft or other criminal offences?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I thank Mr TSE for the follow-up question. Basically, we understand that agarwood is a valuable commodity and as its price increases, so does the trend of illegal felling. We are aware of the situation, we are concerned and we understand. Therefore, the authorities, including the AFCD and the police, will step up efforts in various areas, including patrolling, enforcement, publicity and education.

We have to understand that incense trees are widely distributed. Even if we have stepped up patrols and enforcement, the tree fellers will think of corresponding strategies and act in an organized manner. We have to understand the difficulties involved.

The current legislation has produced a deterrent effect to a certain extent, and imprisonment of two to four years is by no means a short-term. We will

follow the matter up with courts, in the hope that they will impose heavier sentences to reflect that illegal felling of incense trees is taken seriously by the society. As I said in my main reply, we may also apply, where appropriate, for an enhancement of sentence under the Organized and Serious Crimes Ordinance (Cap. 455). That will also strengthen the deterrent effect.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Safety of Food Products Imported from Japan

7. **MR STEVEN HO** (in Chinese): *President, it is reported that tens of American soldiers who participated in the earthquake relief efforts in Fukushima Prefecture in 2011 have collectively filed a lawsuit against the Tokyo Electric Power Company for concealing the truth about the serious leakage of nuclear radiation from a nuclear power plant there, which resulted in their developing cancers due to drinking and exposure to radiation-contaminated water. Moreover, the Japanese Government has recently found that in Fukushima Prefecture, a number of children have developed thyroid cancer, and the underground water has been contaminated by nuclear radiation. Members of the public are therefore worried that radiation-contaminated Japanese food products may be imported into Hong Kong. In this connection, will the Government inform this Council:*

- (1) *of the types, quantities, values and origins of the Japanese food products imported into Hong Kong in the past three years, as well as the respective percentages of the volumes of such food products imported in the total consumption of the same types of food products in Hong Kong; whether the authorities have assessed the impacts of a complete ban on Japanese food imports on local food supply should this be necessary due to radiation contamination problems, and whether they have formulated any contingency plan, including implementing measures to help the trade source food products from other regions;*

- (2) *whether it will liaise with the Japanese authorities to find out if there is any correlation between the aforesaid children's cancers and the consumption of radiation-contaminated food; whether it will review immediately the adequacy of the equipment and manpower in Hong Kong for monitoring the radiation level of food products, step up radiation testing on Japanese food imports and study if it is necessary to extend the restrictions on the import of Japanese food products into Hong Kong; and*
- (3) *whether it has plans to set up a food safety notification mechanism with the Japanese authorities to enhance the exchange of information, and stipulate under the mechanism that once excessive radioactive materials have been detected in food products or water sources for food production, or when it is suspected that any local resident has fallen ill due to the consumption of radiation-contaminated food, the Japanese authorities must notify the Centre for Food Safety (CFS) in Hong Kong immediately and forward to it the testing results concerned; if not, of the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, since the nuclear power plant incident in Fukushima, Japan in March 2011, the CFS under the Food and Environmental Hygiene Department (FEHD) has promptly adopted the Guideline Levels for Radionuclides in Foods Contaminated Following a Nuclear or Radiological Emergency (Guideline Levels) laid down by the Codex Alimentarius Commission (Codex) for testing the radiation levels of every consignment of food products imported from Japan to ensure food safety. The relevant Guideline Levels are as follows:

iodine-131:100 Bq/kg

caesium-134 and caesium-137:1 000 Bq/kg

According to Codex, food products with radionuclide levels not exceeding the relevant Guideline Levels are considered to be safe for human consumption. If food is found to contain radionuclides exceeding the Guideline Levels, the CFS will immediately detain the consignment and arrange for disposal. The CFS

releases the testing summary of relevant food products imported from Japan on its website every day for reference by the public and the food trade.

Such radiation testing, targeting Japanese food imports, has been maintained since then. As at 18 February 2014, the CFS tested about 176 000 samples of food products from Japan, with most of the samples taken at import level. Among them, only three samples of vegetables imported from the Chiba prefecture shortly after the Fukushima nuclear incident were detected on 23 March 2011 with radioactive substances at levels exceeding the Guideline Levels, posing hazards to human health. The three vegetables samples were disposed of and did not find their way into the local market.

After the radiation levels of the above three samples of vegetables were found to have exceeded the Guideline Levels, the Director of Food and Environmental Hygiene issued an order on the following day (that is, 24 March 2011) to prohibit the import of vegetables and fruits, milk, milk beverages and milk powder from the five most affected prefectures of Japan, namely Fukushima, Ibaraki, Tochigi, Chiba and Gunma. Apart from testing of radiation levels of every consignment of food products imported from Japan as mentioned above, the CFS also prohibits the import of all chilled or frozen game, meat and poultry, all poultry eggs and all live, chilled or frozen aquatic products from the five prefectures to Hong Kong with effect from 24 March 2011, unless accompanied by a certificate issued by the competent authority of Japan certifying that the radiation levels do not exceed the Guideline Levels. The order remains in force today.

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

- (1) According to the statistics provided by the Census and Statistics Department, Japanese fresh food products currently imported to Hong Kong mainly include meat, aquatic products, milk and dairy products, vegetables and fruits. The percentage of such food products in the total annual imports of the same types of food products for the period from 2011 to 2013 ranged from less than 1% to about 4% (see table below). The CFS does not have any information about the values, origins and total consumption of the products.

<i>Types of food products imported from Japan</i>	<i>2011 (volume of import (tonnes)/ percentage in total imports of the same type of food products)</i>	<i>2012 (volume of import (tonnes)/ percentage in total imports of the same type of food products)</i>	<i>2013 (volume of import (tonnes)/ percentage in the total imports of the same type of food products)</i>
Meat	2 400 (0.1%)	4 500 (0.3%)	8 500 (0.6%)
Aquatic products	5 500 (2.4%)	5 500 (2.3%)	9 600 (3.7%)
Milk and dairy products	4 500 (2.4%)	2 600 (1.2%)	3 200 (1.3%)
Vegetables	2 000 (0.3%)	2 200 (0.3%)	2 900 (0.4%)
Fruits	2 900 (0.2%)	2 700 (0.2%)	4 500 (0.3%)

Note:

* Figures in the table are approximations

Food imports to Hong Kong come from many sources. Food products from around the world can be imported into Hong Kong for distribution according to market demand as long as they comply with food hygiene requirements. Consumers can choose from a wide variety of food products at varying prices.

The Government is committed to ensuring an adequate and stable food supply. The above information shows that different types of Japanese food constituted only a small portion of Hong Kong's total imports and their effect on the overall food supply in Hong Kong would only be minimal.

The Government encourages the trade to explore new sources of food supply, build up networks of food suppliers across the world and diversify food types. After the Fukushima nuclear incident, we contacted the trade for more information on food supply to Hong Kong and learned that the trade had identified new sources of supply, including countries and regions other than Japan. We will continue to keep a close watch on food supply and the market, and maintain close liaison with the trade in order to take appropriate actions accordingly.

(2) and (3)

To keep abreast of the latest development of the Fukushima nuclear incident, the Special Administrative Region Government will send a delegation to attend the International Experts' Meeting on Radiation Protection after the Fukushima Daiichi Accident to be held by the International Atomic Energy Agency (IAEA) in late February 2014. The meeting covers topics such as the latest development of the Fukushima nuclear incident and the impact of the incident on food safety and human health.

To prevent and control any acute food safety problems, the CFS closely monitors local, Mainland and overseas food incidents (including those occurred in Japan) on a daily basis. Once a food incident is identified, the CFS will assess the impact of the incident on public health before deciding on the most suitable follow-up actions, which may include contacting the relevant authorities for more information, issuing rapid alert messages to the trade, conducting inspections to see whether the food product in question is available on the local market, taking samples for testing and issuing press releases. If justified, the Director of Food and Environmental Hygiene may also consider making an order under the Food Safety Ordinance (Cap. 612) to prohibit the import of the food concerned or direct that the food be recalled, with a view to ensuring food safety and safeguarding public health.

In the wake of the Fukushima nuclear incident, the CFS has maintained effective communication with the Japanese food regulatory authority concerned (that is, Ministry of Agriculture, Forestry and Fisheries (MAFF)). Regarding coverage by certain media on food contamination resulting from radiation leak at Fukushima nuclear power plant, the CFS has approached MAFF for more information.

Meanwhile, the Japanese authority concerned releases the findings of radiation testing reports regularly after the incident. Individual prefectures affected by the Fukushima nuclear incident also report to CFS the results of radiation testing on their food products and water

sources. The CFS can therefore keep abreast of the latest development in a timely manner.

At present, the CFS has sufficient manpower and equipment to monitor the radiation level of food products imported from Japan. The abovementioned testing measures have been effective and are subject to adjustments according to the latest situation. The CFS will continue with its current strategy of surveillance on the radiation level of every consignment of food products imported from Japan, and stay alert to the situation of the Fukushima nuclear power plant and the findings of relevant reports. The CFS will also adopt a risk-based approach in collecting samples for radiation testing, with reference to the test results of the Japanese authority and Hong Kong.

The CFS will also keep track of the development of the incident and the latest measures taken by other countries/places against food products imported from Japan. In the meantime, the CFS will keep in view and refer to the recommendations made by international agencies including the World Health Organization and the IAEA on the issue, for developing our strategies for testing relevant food products and adjusting the surveillance measures on Japanese food imports in time to ensure food safety and protect public health.

Measures to Prevent and Control Human Infections of Avian Influenza A (H7N9)

8. **MR TOMMY CHEUNG** (in Chinese): *President, to prevent and control human infections of avian influenza A (H7N9), the authorities conduct tests at the Man Kam To Animal Inspection Station (MKT) for H7 avian influenza (AI) on samples taken from live chickens imported from the Mainland, and allow these live chickens to be delivered to the Cheung Sha Wan Temporary Wholesale Poultry Market (Market) while waiting for the test results. On the 27th of last month, H7 AI viruses were found in the samples from a batch of live chickens imported from the Mainland. The authorities therefore culled more than 20 000 live chickens in the Market, including local live chickens. In addition, the Market had to be closed for 21 days and trading of both imported Mainland live chickens and local live chickens had to be suspended during the period, causing*

tremendous economic losses to the local poultry industry. I have received complaints from members of the local poultry industry, saying that the authorities should not so readily resort to banning the sale of live chickens, which would nullify all their efforts over the years in strengthening preventive measures against AI. Instead, the authorities should step up measures for the segregation of live poultry imported from the Mainland from those supplied locally, as well as for infection prevention. In this connection, will the Government inform this Council:

- (1) of the respective time currently needed for obtaining the results of H7 AI serological tests conducted at MKT on live chickens imported from the Mainland, and of H7 genetic tests for further ascertaining whether the live chickens carry H7 AI viruses; whether such periods can be shortened to within half an hour, so that the test results on the live chickens imported from the Mainland can be made available before they are delivered to the Market; if so, when this will be implemented; if not, of the reasons for that, as well as whether it will conduct researches on related technology and, if needed, seek funding approval from this Council;*
- (2) whether the authorities will consider building a facility on the site near Man Kam To Road in Sheung Shui which was originally planned for the development of a centralized poultry slaughtering centre, or on another site to be identified in the vicinity, for temporary storage of live chickens imported from the Mainland pending the test results; if so, of the details; if not, the reasons for that; and*
- (3) given that there is currently no H7N9 vaccine for poultry, whether the authorities will provide funding for the development of such a vaccine; if so, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, since the occurrence of H7N9 AI cases in the Mainland last year, Hong Kong has been on high alert and carrying out measures to prevent the spread of the virus. We started conducting H7 AI Polymerase Chain Reaction (PCR) tests on imported live poultry from 11 April 2013. Up to mid-January this year, over 14 000 samples were tested for H5 and H7 AI viruses and all the results were negative.

On the basis of these measures and with the consensus of Mainland authorities concerned, we further introduced the H7 AI serological test on 24 January 2014 to strengthen our capability in background monitoring and in providing early alerts for AI.

On 27 January 2014, the Government confirmed a number of positive samples tested with the H7 AI PCR test in a consignment of live chickens imported from a registered poultry farm in Shunde District of Foshan City, Guangdong Province. The Secretary for Food and Health immediately convened a meeting of the Steering Committee on Serious Response Level under the Preparedness Plan for Influenza Pandemic and decided to adopt a series of corresponding contingency measures to prevent the virus from spreading in the community and safeguard public health in accordance with the aforementioned preparedness plan.

The Agriculture, Fisheries and Conservation Department (AFCD) then declared the Market as an infected place. Some 20 000 live poultry in the market were all culled on 28 January 2014. The market would be closed for 21 days until 18 February 2014 for thorough disinfection and cleansing. During the closure period, trading of live poultry (including imported and local live poultry) was suspended and all local chicken farms were temporarily suspended from supplying live chickens to the market. AFCD officers inspected all the local chicken farms and collected additional samples for testing to ensure that local farms were not affected by H7 AI.

Moreover, according to the consensus reached between the Hong Kong Special Administrative Region Government (HKSARG) and the Mainland on the handling of H7 AI, the HKSARG has notified the relevant Mainland authorities of the case for tracing the source of infection. Supply of live poultry from the registered poultry farm in question to Hong Kong would be suspended, while the relevant entry-exit inspection and quarantine authorities would conduct investigation and ensure that the farm fully complies with the biosecurity management requirements. Upon expiry of the 21-day suspension period, the Mainland authorities would conduct surveillance of the farm and notify us of the result. Supply from the registered farm in question would resume only after both sides are content with the investigation result.

It should be noted that this incident was not an outbreak. Rather, it demonstrates that the testing system has performed the expected functions to

provide an additional safeguard to reduce the risk of infected poultry entering our retail markets.

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

- (1) All live poultry supplied to Hong Kong markets (including local and imported ones) are subject to stringent inspection and quarantine procedures. Before leaving the farms, poultry ready for sale must be quarantined for five days and pass both the AI PCR test and the serological test to show that they have an adequate level of H5 antibodies and are not carrying any AI virus (including H5 and H7 sub-types) or having any AI clinical symptoms.

With the implementation of the registered farm system in 1998, all live poultry imported to Hong Kong must come from Mainland registered farms. The relevant Mainland entry-exit inspection and quarantine authorities will conduct AI tests for live poultry on Mainland farms and issue animal health certificates to consignments of live poultry with satisfactory test results before they are delivered to Man Kam To Animal Inspection Station (Man Kam To). Under the existing arrangements, the Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department will once again collect tissue and blood samples from the live poultry at Man Kam To and pass the samples to AFCD's Veterinary Laboratory for conducting the tests. The AI tests will take about four to six hours to complete. The consignments would be released from the wholesale market to the retail outlets only after test results are available and this serves to protect public health. If any positive samples are found in the serological test, the CFS will collect 120 additional tissue samples from the same consignment of live poultry for PCR test, which will take about eight to 10 hours.

At present, there is no technology which will enable an effective testing of AI within half an hour. The AFCD will keep in view the technologies development and conduct technical studies in a timely manner.

- (2) In response to the request from the trade, the Government is actively exploring the arrangement of separate holding of imported and local

live poultry before AI test results of imported poultry are available. In the site search, the Administration has to take into account planning and land use of the sites, the infrastructure required for the temporary holding of live poultry, the impacts on the nearby environment and community (including the presence of any chicken farm in the vicinity), and the lead time required for putting the facility in place. The Food and Health Bureau and the relevant departments have visited some of the sites under consideration, and held an inter-departmental meeting to discuss the relevant issues. We are now liaising with the relevant works departments on the technical issues, and we aim to make a decision on the site and the relevant arrangements at the earliest possible.

As the establishment of such facility takes time, the Government has decided to suspend the import of live poultry for slaughter and consumption. The import of day-old chicks as well as chilled or frozen poultry products will not be affected. We will review the progress of the relevant follow-up actions in around four months' time and discuss with the relevant Mainland authorities the arrangements of live poultry supply to Hong Kong.

- (3) The development of a vaccine is a time-consuming and complex task. There may not be sufficient facilities or experience in this area in Hong Kong. Nevertheless, we will closely monitor the research and development of H7N9 vaccines for use in poultry in the Mainland and other countries, and review our assessment in a timely manner.

Management and Development of Asia World-Expo

9. **MRS REGINA IP** (in Chinese): *President, with the successive completion of infrastructure projects such as the Hong Kong-Zhuhai-Macao Bridge (HZMB) and the Tuen Mun-Chek Lap Kok Link in the coming few years, commuting between Hong Kong and the Mainland will become faster and more convenient. Some members of the exhibition industry have forecast that the utilization of the AsiaWorld-Expo (AWE) on North Lantau will increase substantially by then. In addition, in his reply to a question raised by a Member of this Council last year, the Secretary for Commerce and Economic Development said that he would*

continue to explore with the industry ways to enhance the co-operation between the Hong Kong Convention and Exhibition Centre (HKCEC) and AWE, so as to facilitate a more effective utilization of the overall convention and exhibition facilities in Hong Kong. In this connection, will the Government inform this Council:

- (1) given that the utilization of the exhibition facilities at AWE almost reached saturation on eight show days in 2012, whether the authorities have any plan to expand AWE to cater for the increased demand for exhibition facilities concomitant with the commissioning of the aforesaid infrastructure facilities, as well as to tie in with the authorities' policy objective of giving full play to the benefit of HZMB facilitating the "bridgehead economy" in Tung Chung and the neighbouring areas; if they do not have such plans, of the reasons for that; and*
- (2) as it has been learnt that the Hong Kong Trade Development Council (TDC) is conducting studies on acquisition of the operating right of AWE with a view to putting the two exhibition venues under the operation of one management company, so as to facilitate more effective co-ordination on rental matters of exhibition facilities, whether the authorities have conducted any feasibility study and formulated specific plans in connection with acquisition of the operating right of AWE; if they have not, of the reasons for that?*

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

- (1) At present, there are two major convention and exhibition facilities in Hong Kong, namely the HKCEC in Wan Chai and the AWE on Lantau Island. The supply of convention and exhibition facilities at the two venues is tight during the major purchasing seasons in recent years.

The convention and exhibition industries are important to the economic development of Hong Kong. Therefore, the Government has just commissioned a consultancy study early this year to assess the demand for convention and exhibition facilities in Hong Kong in

the coming 15 years, taking into account the situation in Hong Kong and the global and regional developments of the convention and exhibition industries. The Government will, according to the future development need and taking into account relevant factors such as cost-effectiveness, consider appropriate measures to cater for the development of the convention and exhibition industries, including whether to expand the existing convention and exhibition facilities, and so on.

- (2) Although HKCEC and AWE are operated by different companies, the Government has been encouraging HKCEC and AWE to enhance collaboration to effectively utilize the existing convention and exhibition facilities in Hong Kong. A good example is the Hong Kong Jewellery and Gem Fair, which has been held concurrently at HKCEC and AWE by a private organizer since September 2009. The number of exhibitors has increased from 3 061 in 2009 to 3 633 in 2013 (that is, an increase of about 19%), while the number of participants has also increased from 39 146 to 52 651 (that is, an increase of about 35%). The TDC will stage the international jewellery shows at HKCEC and AWE in March 2014 under a similar model for the first time, to better utilize the two venues allowing room for expansion.

As regards venue co-ordination, the Meetings and Exhibitions Hong Kong (MEHK) under the Hong Kong Tourism Board has been assisting organizers interested in staging conventions and exhibitions in Hong Kong to identify suitable convention and exhibition venues and providing them with one-stop professional support. In the past, there were individual organizers interested in staging conventions or exhibitions in Hong Kong and yet could not identify needed venues in HKCEC during their specified dates. The MEHK helped introduce AWE to these organizers for consideration. The work of the MEHK to assist convention and exhibition organizers to identify suitable venues would not be affected though the two venues are managed by different companies. Regarding the report that TDC is conducting studies on the acquisition of the operating right of AWE, TDC stated publicly earlier last year that it had not currently taken any action regarding the acquisition of the operating right of AWE.

Use of Video-recording Devices by Police Officers During Public Assemblies and Processions

10. **MS EMILY LAU** (in Chinese): *President, I have learnt that a public assembly was held at Chater Road, Central on 1 January this year, during which some police officers attempted to seize some protest items and thus came into conflict with the protesters. Some journalists saw two uniformed police constables making video records of the scene of the conflict. In this connection, will the executive authorities inform this Council:*

- (1) *of the details of the guidelines issued by the authorities on the use of video-recording devices by police officers when discharging law-enforcement duties, including the circumstances under which video records of public assemblies and processions may be made;*
- (2) *whether they have investigated if, before making video records, the two aforesaid police constables or other police officers had notified the persons present by raising information signs or other means that they would be making video records; if such notification had been made, of the details; if no notification had been made, the reasons for that;*
- (3) *as some protesters have relayed that when making video records during public assemblies and processions, the police often do not notify the persons present that video recording is in progress, whether the police will in future assign police officers to notify the persons present before making video records that they will do so; and*
- (4) *of the uses and means of disposal of the information collected by the police by using video-recording devices; the monitoring mechanism the police have in place to prevent police officers from making video records of public assemblies and processions arbitrarily?*

SECRETARY FOR SECURITY (in Chinese): *President, since 2006, the police have been using hand-held video recording devices to record incidents with law and order implications for investigation and evidential purposes. Our reply to the various parts of the Member's question is as follows:*

(1), (3) and (4)

The police may make video records of individual public order events (POEs) on a need basis for case investigation, evidential, internal review and strategy evaluation purposes, and as an ongoing effort to augment the management and response capabilities of the police in handling POEs. The police do not target at individual participants during video-recording. Only if a breach of the peace or public order is likely to occur, or has occurred, or if there are persons suspected of committing criminal offences, will the behaviour of such persons suspected of causing a breach of the peace and the course of the incident become the subject of video-filming. In case the focus is on any particular persons, police officers shall, where reasonably practicable, notify such persons prior to the commencement of the recording.

In the above circumstances, it is reasonable and lawful for the police to take evidence by video-filming those who are suspected to have violated the law.

The police have formulated detailed internal guidelines and operational procedures to regulate the use and operation of video-recording devices during POEs, as well as the handling of recorded information. Such procedures are drawn up to ensure that police officers comply with the requirements of the Personal Data (Privacy) Ordinance and exhibit handling procedures and guidelines laid down by the Court. Professional training is also provided to police officers to ensure that they are conversant with the use of video-recording devices and relevant laws and guidelines.

On another front, the police do not make video records of POEs regularly. No officers are allowed to carry video-recording devices to stand-by in the vicinity of a POE venue unless they have obtained authorization from officers of the rank of Chief Superintendent or above. Only under specific circumstances shall a video team be allowed to record a POE as clearly instructed by officers of the rank of Superintendent or above. Officers using hand-held

video-recording devices shall be identifiable by wearing uniforms or vests with the wordings "警察" and "POLICE".

No captured footage shall be retained by the police unless for investigation, evidential or internal review purposes. The police have clear and strict guidelines and procedures on handling the recorded information in order to ensure, *inter alia*, the safe custody, proper handling and timely destruction of captured footage. Footage with investigative or evidential value will be treated as case exhibits to be retained until the conclusion of the investigation and court proceedings, and shall then be destroyed. Footage carrying no investigative or evidential value shall be deleted after 31 days from the date of production. If the footage is to be retained for more than 31 days, authorization from a Senior Superintendent shall be obtained and such an authorization shall be reviewed on a monthly basis by the authorizing officer.

- (2) During the public meeting at Charter Road on 1 January 2014, police officers took footage near the pedestrian subway at Charter Road pedestrian precinct and in the vicinity of Statue Square. The officers concerned were all in uniform, overtly using hand-held video-recorders to take the footage. The video-recording was carried out in accordance with the guidelines and relevant procedures of the police.

During that public meeting, the police came to know that some demonstrators were suspected to have embezzled the luggage trolleys of the Airport Express, and that the behaviour of some demonstrators had caused the police officers on spot to believe there could be breach of the peace. Such act and behaviour then became the subject of video recording.

Verification of Information Furnished by Employers on Employer's Return

11. **MR TANG KA-PIU** (in Chinese): *President, at present, employers are required to file with the Inland Revenue Department (IRD) an Employer's Return of Remuneration and Pensions (Employer's Return) in respect of each employee,*

furnishing information such as the employee's personal particulars and remuneration paid to the employee in the relevant year of assessment, and so on. Recently, some members of the public have approached me for assistance, saying that they had accidentally discovered that the information furnished by their former employer about them, including their annual income, was untrue, and that they were merely temporary staff of that employer, rather than full-time employees, as furnished by the employer. They have also pointed out that there are loopholes in the aforesaid arrangement because employees will not know that their employers have furnished IRD with untrue information about them if they have not received the tax demand notes from IRD, and no confirmation by employees by means of signature is required for the Employer's Returns filed with IRD by employers. In this connection, will the Government inform this Council:

- (1) whether IRD has conducted random checks regularly on the Employers' Returns filed by employers; if it has, how it verifies the existence of employment relationship between employers and employees, as well as the truthfulness of the employees' personal particulars and remuneration reported on the Employer's Returns;*
- (2) since it is stated on IRD's website that after filing the Employer's Return, the employer should pass a copy of the document to his employee, of the measures put in place by the authorities to conduct random checks and verify if the employers have done so; of the number of cases uncovered by the authorities in the past five years in which the employers had not done so, and whether the employers concerned have been penalized; if they have, of the penalties in general; and*
- (3) of the respective numbers of cases in the past five years in which the authorities uncovered that the employers had furnished false information on their employees' remuneration because of the complaints received or through other channels; among such cases, of the number of those in which the employers had exaggerated their employees' remuneration, the relevant total amount of taxes that should have been paid by the employers, and the number of employers consequently convicted; how the authorities will plug the aforesaid loopholes?*

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

- (1) The IRD adopts the "Assess First, Audit Later" (AFAL) system for tax assessment, that is, assessments will be issued based on the information reported in tax returns first and, assessments will then be selected for audit using customized computer-assisted case selection programme and risk assessment tools. The AFAL system is applicable to both Salaries Tax assessments for employees and Profits Tax assessments for employers. When conducting post-assessment audits or based on information available, if there is doubt on the salary expenses charged in the accounts of the employers or on the remuneration reported in the Employer's Returns, the IRD's assessing officers will request the employers to furnish further supporting information and documents, such as copies of employment contracts, salary payment records, employees' acknowledgement and bank statements. In addition, the IRD may request the employees to provide relevant information to verify the correctness of the remuneration reported in the Employer's Returns. According to the Inland Revenue Ordinance (the IRO), any person who fails to comply with the requirements specified in the IRO or makes an incorrect return or false report with intent to evade tax or assist any other person to evade tax would be subject to heavy penalties. The maximum penalty for tax evasion is a fine of \$50,000 plus a further fine of three times the amount of tax undercharged and imprisonment for three years.
- (2) Generally, the IRD issues Employer's Returns (BIR56A) to employers in April each year, requiring employers to report their employees' remuneration for the relevant year of assessment. In the "Notes and Instructions" enclosed with the Employer's Returns, the IRD reminds employers to provide a copy of the completed Employer's Return of Remuneration and Pension (IR56B) to their employees concerned so as to facilitate the latter's completion of tax returns. However, this is not a statutory requirement. This guideline has also been uploaded to the IRD's website for public reference.

- (3) The IRD could not provide statistical data for the past five years on incorrect reporting of employees' remuneration discovered due to complaints or by other means as the IRD does not keep such statistics. The IRD would follow up on informer's cases concerning incorrect filing of Employer's Returns. Penalty actions under the IRO will be taken if the IRD discovers that an employer, without reasonable excuse, makes an incorrect return. The IRD will also continue its effort to combat tax evasion and tax avoidance and to reinforce the use of information technology, staff training and investigation techniques so as to enhance the overall effectiveness of its work.

Railway Services for Residents in Tsing Yi

12. **DR KWOK KA-KI** (in Chinese): *President, recently, some Tsing Yi residents have relayed to me that due to the low frequency of the MTR Tung Chung Line (TCL) trains, which they usually take to travel between Tsing Yi Station and Hong Kong Station, they are often unable to board the train. On the other hand, the patronage of the Airport Express (AEL) which stops at these two stations en route has yet to reach its maximum capacity. They are of the view that the MTR Corporation Limited (MTRCL) has failed to make optimal use of the passenger capacity of the AEL to meet the transport need of Tsing Yi residents. In this connection, will the Government inform this Council whether:*

- (1) *it knows the maximum design daily capacity of the AEL and its average actual daily patronage in the past 10 years; if there is a great discrepancy between the two figures, whether it has looked into the reasons for the discrepancy, and whether MTRCL implemented any measure in the past three years to increase the patronage of the Airport Express; if MTRCL did, of the results achieved;*
- (2) *it knows if it is technically feasible to increase the train frequency of TCL during peak hours; if it is not feasible, of the details; if it is feasible, of the reasons why MTRCL has not made full use of the capacity of the TCL to enhance its service;*

- (3) *it knows the respective total hourly frequencies and patronages of trains of the AEL and TCL running between Tsing Yi Station and Kowloon Station and those running between Tsing Yi Station and Hong Kong Station during peak hours and non-peak hours; and*
- (4) *it has encouraged MTRCL to introduce an AEL Monthly Pass similar to the TCL Monthly Pass to provide Tsing Yi residents with one more transport option and attract Tsing Yi residents to switch from riding on cross-harbour buses to railway, so as to increase the patronage of the AEL and implement the policy objective of "revolving around a railing-based network complemented by bus services", put forward in the 2013 Policy Address; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to Dr KWOK Ka-ki's question is as follows:

The Airport Railway comprises the AEL and TCL. AEL provides a dedicated express service linking city centre, Hong Kong International Airport (HKIA) and AsiaWorld-Expo, stopping at five stations including AsiaWorld-Expo, Airport, Tsing Yi, Kowloon and Hong Kong Stations. TCL provides a domestic mass transit service with eight stations including Tung Chung, Sunny Bay, Tsing Yi, Lai King, Nam Cheong, Olympic, Kowloon and Hong Kong Stations. Passengers travelling on TCL may interchange at Sunny Bay, Lai King, Nam Cheong and Hong Kong Stations for Disneyland Resort Line, Tsuen Wan Line, West Rail Line and Island Line (at Central Station) respectively and head to other districts.

According to the MTRCL, the existing average per hour per direction carrying capacity of AEL is 4 800. The average daily patronage of AEL in 2013 is 40 000. The highest patronage in an hour per direction is 2 200 and the loading is 46%. The patronage statistics of AEL in past 10 years are at Annex.

As the clientele of AEL are mainly passengers travelling to and from HKIA, the MTRCL advises that its patronage is affected by various factors such as travel season and overall economic conditions, and so on, and fluctuates.

Thus, it is considered not appropriate to make direct comparison between AEL and other local railway lines.

Having regard to the growing loading in recent years, the MTRCL has enhanced train frequency of AEL from 12 minutes to 10 minutes since January 2012, with a view to providing a better travelling environment for passengers.

To attract more passengers to ride on AEL, the MTRCL introduces from time to time different kinds of fare concessions such as group tickets and child concessions, and so on. In addition, the MTRCL offers two kinds of Airport Express Morning Express Service, namely "Kowloon-Hong Kong" and "Tsing Yi-Hong Kong" Morning Express Services. These services are available from 7 am to 10 am from Monday to Saturday (except Public Holidays) and the fare is \$20. Tickets are available at the AEL Customer Service Centres at Kowloon or Tsing Yi Stations. According to MTRCL's statistics, there are on the average around 830 passengers enjoying the said services each day and around 90% of them get on board at Tsing Yi Station.

The frequency of TCL trains stopping at Tsing Yi Station during morning peak hours is four minutes. To cope with the service demand during morning peak hours, around one third of these trains depart from Tsing Yi Station (as the terminus) heading towards Hong Kong Station. As for Tsing Yi Station, there is one AEL train after every two TCL trains stopping at Tsing Yi Station. The train frequency of TCL during non-peak hours ranges from 6.5 to 12 minutes.

Currently, the existing per hour per direction carrying capacity of TCL during peak hours is 37 500 and the highest patronage in the busiest hour is 22 400. The busiest section of TCL is from Olympic Station to Kowloon Station and the average loading during peak hours is 60%. It is considered the existing train frequency could meet the service demand.

The MTRCL advises that TCL and AEL are two railway lines of different nature. Their major clienteles, peak and non-peak hours, alignments, number of stations and train frequencies, and so on, are different. For example, TCL's peak hours are morning and evening (before and after working hours) but these are not necessarily the peak hours of AEL. As regards the alignment, TCL trains running to and from Tsing Yi Station and Hong Kong Station stop at Lai King, Nam Cheong, Olympic and Kowloon Stations, but AEL trains stop at Kowloon

Station only. Having regard to the various reasons above, the MTRCL considers it inappropriate to directly add up the peak and non-peak hours train frequencies and patronage of these two railway lines.

Annex

Patronage Statistics of AEL from 2004 to 2013

<i>Year</i>	<i>Carrying Capacity (per hour per direction)</i>	<i>Highest Patronage (an hour per direction)</i>	<i>Loading[#]</i>
2004	3 990	1 100	28%
2005	3 990	1 100	28%
2006	3 990	1 300	33%
2007	3 990	1 500	38%
2008	3 990	1 300	33%
2009	3 990	1 400	35%
2010	3 990	2 000	50%
2011	3 990	1 700	43%
2012	4 788*	1 900	40%
2013	4 788	2 200	46%

Notes:

There is no peak and non-peak hours train frequency for daily AEL service. The loading is calculated based on the highest patronage in an hour per direction.

* The train frequency of AEL has been enhanced from 12 minutes to 10 minutes since 15 January 2012.

Chief Executive's Duty Visits to Report on His Work to the Central Authorities

13. **MR FREDERICK FUNG** (in Chinese): *President, it has been reported that the Director of the Hong Kong and Macao Affairs Office of the State Council indicated on 19 December last year that the arrangements for the Chief Executives of Hong Kong and Macao to pay duty visits to Beijing to report on their work were to be standardized, and that duty visits in future would be completed by 19 December each year. He added, "We have to specify clearly what areas should be covered by duty visits. Instead of focusing only on the*

achievements made in the past year, now we also require the identification of inadequacies as well as the inclusion of the new plans for the year ahead." He also stressed that during the duty visits, Chief Executives would also need to report on the progress made and problems encountered in the thorough implementation of the Basic Law. Regarding the arrangements for duty visits of the Chief Executives of Hong Kong to the Central Authorities, will the Government inform this Council:

- (1) of the modes and circumstances of the duty visits made by the Chief Executives of the previous terms; whether the Government has received any demand from the Central Authorities in the past for standardizing and changing the modes and contents of Chief Executive's duty visits; whether the current-term Government has ascertained why the Central Authorities require the standardization of Chief Executive's duty visits; if it has, of the details;*
- (2) of the details of the standardization of Chief Executive's duty visits; whether the duty visit in December last year was made in accordance with the latest standards; whether the authorities have carried out a review of any inadequacy in last year's governance; if they have, of the conclusion, and whether such conclusion was reported to the Central Authorities during that duty visit; and*
- (3) whether it has assessed if the Central Authorities' requirement for the standardization of Chief Executive's duty visits will have an impact on the implementation of policies by the Government under the principle of "one country, two systems", and will arouse public concern that the Central Authorities interfere in Hong Kong's internal affairs; if the assessment outcome is in the affirmative, whether the authorities have relayed it to the Central Authorities, and how they allay such public concern?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in consultation with the Chief Executive's Office, the Administration's consolidated reply to the questions raised by Mr Frederick FUNG is as follows:

Pursuant to Article 43 of the Basic Law, the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) shall be accountable to the Central People's Government and HKSAR in accordance with the provisions of the Basic Law.

HKSAR is a special administrative region established by the People's Republic of China in accordance with Article 31 of the Constitution. Article 43 of the Basic Law provides that the Chief Executive of the HKSAR shall be the head of the HKSAR and shall represent the HKSAR, and shall be accountable to the Central People's Government and HKSAR in accordance with the provisions of the Basic Law. Article 48 also provides that Chief Executive shall lead the Government of HKSAR; be responsible for the implementation of the Basic Law and other laws which, in accordance with the Basic Law, apply in the HKSAR; implement the directives issued by the Central People's Government in respect of the relevant matters provided for in the Basic Law; and conduct, on behalf of the Government of the HKSAR, external affairs and other affairs as authorized by the Central Authorities. Under the principle of "one country, two systems" and the provisions of the Basic Law, Chief Executive has special and important constitutional role. Accordingly, Chief Executive regularly reports to Central People's Government on the work of the HKSAR Government and the situation of HKSAR.

Since assumption of office, Chief Executive has been making detailed, comprehensive, objective and truthful reports to state leaders on the situation of HKSAR and the work of the HKSAR Government. State leaders have fully affirmed the work of Chief Executive and the HKSAR Government. As in previous duty visits, Chief Executive met and informed the media of the developments of his visit during his stay in Beijing in December last year.

The arrangement of Chief Executive's report to Central People's Government is in line with the principle of "one country, two systems" and the provisions of the Basic Law. It does not constitute any interference in Hong Kong's internal affairs by the Central Authorities. Chief Executive will, as always, strictly comply with the provisions of the Basic Law. He will continue to uphold the "one country, two systems" principle, lead the HKSAR Government to govern Hong Kong in accordance with the law and be accountable to Central People's Government and HKSAR.

Government's Requests for Internet Service Providers to Disclose or Remove Users' Information

14. **MR CHARLES PETER MOK** (in Chinese): *President, according to the Transparency Report published biannually by Google, an Internet search-engine service provider, the Hong Kong Government made 253 requests to the company for disclosure of its users' information in the first half of 2013, but about two thirds of such requests were not acceded to by the company. In addition, the Law Enforcement Requests Report published by Microsoft, a computer technology company, indicated that the company received 597 requests for disclosure of its users' information from the Hong Kong Government during the same period, and it provided part of its users' information in response to about 80% of such requests. In this connection, will the Government inform this Council:*

- (1) *of the details of the requests made by government departments to various types of Internet service providers/Internet platforms/websites (collectively referred to as "service providers") for disclosure of their users' information since February 2013, including:*
 - (i) *names of service providers (if such information can be provided);*
 - (ii) *types of service providers;*
 - (iii) *types of requests;*
 - (iv) *whether content information was included;*
 - (v) *amount of information requested;*
 - (vi) *number of accounts involved;*
 - (vii) *reasons for making the requests;*
 - (viii) *details of the information requested;*

- (ix) *whether the requests were made under a court order;*
- (x) *dates on which the requests were made;*
- (xi) *deadlines for processing the requests (regardless of whether such requests were acceded to or not);*
- (xii) *whether the requests were acceded to by service providers; and*
- (xiii) *reasons given by service providers for not acceding to the requests,*

with a breakdown by name of government department set out in Table 1 (if such information cannot be provided, of the reasons for that);

Table 1

<i>Name of government department</i>	<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>	<i>(v)</i>	<i>(vi)</i>	<i>(vii)</i>	<i>(viii)</i>	<i>(ix)</i>	<i>(x)</i>	<i>(xi)</i>	<i>(xii)</i>	<i>(xiii)</i>

(2) *of the details of the requests made by government departments to service providers for removal of their users' information since February 2013, including:*

- (i) *names of service providers (if such information can be provided);*
- (ii) *types of service providers;*
- (iii) *types of requests;*
- (iv) *amount of information requested for removal;*

- (v) *number of accounts involved;*
- (vi) *reasons for making the requests;*
- (vii) *details of the information requested for removal;*
- (viii) *whether the requests were made under a court order;*
- (ix) *dates on which the requests were made;*
- (x) *deadlines for processing the requests (regardless of whether such requests were acceded to or not);*
- (xi) *whether the requests were acceded to by service providers; and*
- (xii) *reasons given by service providers for not acceding to the requests,*

with a breakdown by name of government department set out in Table 2 (if such information cannot be provided, of the reasons for that);

Table 2

<i>Name of government department</i>	<i>(i)</i>	<i>(ii)</i>	<i>(iii)</i>	<i>(iv)</i>	<i>(v)</i>	<i>(vi)</i>	<i>(vii)</i>	<i>(viii)</i>	<i>(ix)</i>	<i>(x)</i>	<i>(xi)</i>	<i>(xii)</i>

- (3) *of the details of the internal guidelines and mechanisms under which requests are made by government departments/law-enforcement agencies to service providers for disclosure or removal of users' information; whether the authorities conducted any review on such guidelines last year, in particular whether they will consider requesting service providers for such information only if there is no intrusion into commercial secrets and personal privacy; if they did, of the details; if not, the reasons for that; and*

- (4) *whether the authorities will make public the mechanisms currently in place for monitoring requests made by government departments/law-enforcement agencies to service providers for disclosure or removal of users' information, and whether they will regularly publish the information mentioned in parts (1) and (2), so as to increase the transparency of the Government's work; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, regarding the four-part question, the Administration's reply is as follows:

- (1) Details of the requests made by government departments to service providers for disclosure of their users' information since February 2013 are listed in Table 1.
- (2) Details of the requests made by government departments to service providers for removal of their users' information since February 2013 are listed in Table 2.
- (3) and (4)

In carrying out their duties, the officers of individual government departments (including law-enforcement agencies) may request for information or co-operation from the relevant persons or organizations (including Internet service providers/Internet platforms/websites) in accordance with the relevant laws and established procedures or guidelines as and when necessary. Such requests are mainly related to crime prevention and detection as well as law-enforcement. The government departments and law-enforcement agencies concerned will ensure that these requests are made only when necessary for the purpose of performing duties. Since the existing mechanism functions effectively, we do not think it is necessary to review the relevant procedures/guidelines.

Table 1

Details of the requests made by government departments to service providers for disclosure of their users' information since February 2013

Name of government department	(i) Names of service providers (if such information can be provided) (Note 1)	(ii) Types of service providers	(iii) Types of requests	(iv) Whether content information was included	(v) Amount of information requested	(vi) Number of accounts involved	(vii) Reasons for making requests	(viii) Details of the information requested	(ix) Whether the requests were made under a court order	(x) Dates on which the requests were made	(xi) Deadlines for processing the requests (regardless of whether such requests were accepted to or not)	(xii) Whether the requests were accepted by service providers	(xiii) Reasons given by service providers for not acceding to the requests
Companies Registry	Cannot be provided	Internet service provider	Request for contact information of the person-in-charge of the web site	No	7 items in total	5	Suspected infringement of Companies of the Registry's copyright	Contact information of the person-in-charge of the web site	No	20.2.2013 to 10.7.2013	18.4.2013 to 10.7.2013	No	(i) The web site no longer operates under the Internet Protocol address provided by the Internet service provider; (ii) the request has been forwarded to their client

Name of government department	(i) Names of service providers (if such information can be provided) (Note 1)	(ii) Types of service providers	(iii) Types of requests	(iv) Whether content information was included	(v) Amount of information requested	(vi) Number of accounts involved	(vii) Reasons for making the requests	(viii) Details of the information requested	(ix) Whether the requests were made under a court order	(x) Dates on which the requests were made	(xi) Deadlines for processing the requests (regardless of whether such requests were acceded to or not)	(xii) Whether the requests were acceded to by service providers	(xiii) Reasons given by providers for not acceding to the requests
Customs and Excise Department	Cannot be provided	Internet service provider/ Internet platform	Request for user's information	No	873 items in total	873	Crime prevention and detection information	Request for user's information	No	Feb 2013 to Jan 2014	No deadline set	Yes	N/A
Hong Kong Police Force	Cannot be provided	Internet service provider/ Internet platform/ web site	Request for user's information	No	4 557 items in total	4 557	Crime prevention and detection - primarily involving technology crimes or crimes related to the use of the Internet. The Police handled a total of 5 212 cases of technology crimes from February 2013 to January 2014	Request for user's information	Partially	Feb 2013 to Jan 2014	No deadline set	Partially	In some cases, user accounts or records that do not exist are involved, or the registered user or Internet Protocol address is not in Hong Kong. Under this situation, the service provider cannot provide the information.

Name of government department	(i) Names of service providers (if such information can be provided) (Note 1)	(ii) Types of service providers	(iii) Types of requests	(iv) Whether content information was included	(v) Amount of information requested	(vi) Number of accounts involved	(vii) Reasons for making the requests	(viii) Details of the information requested	(ix) Whether the request was made under a court order	(x) Dates on which the requests were made	(xi) Deadlines for processing the requests (regardless of whether such requests were acceded to or not)	(xii) Whether the requests were acceded to by service providers	(xiii) Reasons given by service providers for not acceding to the requests
Office of the Communications Authority	Cannot be provided	Internet service provider / Internet platform	Request for registrant's information and/or records of messages sent	No	70 items in total	106	Investigation under the Unsolicited Electronic Messages Ordinance (Cap. 593)	Registrant's name, address, telephone number, date and current status of registration, etc; records of messages sent and the related Internet Protocol address	No	4.2.2013 to 28.1.2014	Within two weeks after sending out the request / in progress	Yes	N/A

Note 1 Since the question involves the commercial information of a large number of service providers, it is rather impossible for the Government to obtain consent from all relevant organisations to disclose the required information. Hence, the names of individual service providers have not been made public.

Note 2 Except for the information provided herein, other information cannot be provided due to the secrecy provisions under the Business Registration Ordinance and the Inland Revenue Ordinance.

Table 2

Details of the requests made by government departments to service providers for removal of their users' information since February 2013

Name of government department	(i) Names of service providers (if such information can be provided) (Note 1)	(ii) Types of service providers	(iii) Types of requests	(iv) Amount of information requested for removal	(v) Number of accounts involved	(vi) Reasons for making requests	(vii) Details of the information requested for removal	(viii) Whether the requests were made under a court order	(ix) Dates on which the requests were made	(x) Deadlines for processing the requests (regardless of whether such requests were accepted to or not)	(xi) Whether the requests were accepted to by service providers	(xii) Reasons given by service providers for not acceding to the requests
Customs and Excise Department	Cannot be provided	Internet service provider/ Internet platform	Removal of information	391 items in total	391	Combat of infringement offence	Web pages/ accounts/ hyperlinks	No	Feb 2013 to Jan 2014	No deadline set	Yes	N/A
Department of Health - Chinese Medicine Division	Cannot be provided	Internet platform	Removal of Information	210 items in total	133	Suspected auction or sale of unregistered proprietary Chinese medicines / Chinese herbal medicines specified in Schedule 2 of the Chinese Medicine Ordinance (Cap. 549)	Information of products for auction	No	11.3.2013 to 21.1.2014	11.3.2013 to 21.1.2014	Yes	N/A

Name of government department	(i) Names of service providers (if such information can be provided) (Note 1)	(ii) Types of service providers	(iii) Types of requests	(iv) Amount of information requested for removal	(v) Number of accounts involved	(vi) Reasons for making the requests	(vii) Details of the information requested for removal	(viii) Whether the requests were made under a court order	(ix) Dates on which the requests were made	(x) Deadlines for processing the requests (regardless of whether such requests were accessed to or not)	(xi) Whether the requests were accessed to by service providers	(xii) Reasons given by service providers for not acceding to the requests
Department of Health - Drug Office	Cannot be provided	Internet platform / web site	Request service provider to take appropriate action against the hyperlinks which contain information on suspected auction or sale of controlled or unregistered medicines	1 321 items in total	Information unavailable	Suspected auction or sale of controlled or unregistered medicines	Auction or sale information	No	Feb 2013 to Jan 2014	No deadline set	Yes	N/A
Hong Kong Police Force	Cannot be provided	Internet service provider / Internet platform / web site	Removal of user's information	31 items in total	31	Crime prevention	Mainly involving obscene articles and phishing web sites (Note 2)	No	Feb to Dec 2013	No deadline set	Partially	Most of the organisations concerned removed the relevant information as requested by the Police.

Name of government department	(i) Names of service providers (if such information can be provided) (Note 1)	(ii) Types of service providers	(iii) Types of requests	(iv) Amount of information requested for removal	(v) Number of accounts involved	(vi) Reasons for making requests	(vii) Details of the information requested for removal	(viii) Whether the requests were made under a court order	(ix) Dates on which the requests were made	(x) Deadlines for processing the requests (regardless of whether such requests were acceded to or not)	(xi) Whether the requests were acceded to by service providers	(xii) Reasons given by service providers for not acceding to the requests
Hongkong Post	Cannot be provided	Web site	Removal of a dedicated web page	1	1	The dedicated web page infringed the trademark of Hongkong Post	Articles, photos and replies to enquiries published by the web page owner in the Hongkong Post	No	30.4.2013	15.5.2013	Yes	N/A
Office of the Communications Authority	Cannot be provided	Internet discussion forum / web site	Removal of indecent content or display of the required statutory warning notice	One article and several photos	2	Contained indecent content	Text/photos containing indecent content	No	11.6.2013 and 31.7.2013	No deadline set	Yes	N/A

Note 1 Since the question involves the commercial information of a large number of service providers, it is rather impossible for the Government to obtain consent from all relevant organisations to disclose the required information. Hence, the names of individual service providers have not been made public.

Note 2 Phishing web sites are fake web sites for stealing others' login name and password.

Investment Returns of Funds Set Up or with Moneys Injected by Government

15. **MR PAUL TSE** (in Chinese): *President, it has been reported that the 16 funds set up or with moneys injected by the Government in 2008 or later have an aggregate balance of \$67 billion, and the investment return rates of more than half of such funds lagged behind that of the Exchange Fund (EF) over the same period, and the investment returns of as many as 11 funds could not even cover the expenses. Moreover, the Arts and Sport Development Fund, which received an injection of \$3 billion in 2011-2012, suffered a loss equivalent to 5% of the amount injected that year. Some members of the public have queried that the investment failure of the funds concerned has resulted in loss of public money. In this connection, will the Government inform this Council:*

- (1) *of the differences between the investment returns of the various funds mentioned above and the return of EF under the management of the Hong Kong Monetary Authority (HKMA) in the past three years;*
- (2) *whether it has conducted any study on the causes for the deficits suffered by the 11 aforesaid funds and taken any measure to improve their investment return rates; if it has, of the outcome of the study; if not, the reasons for that;*
- (3) *whether it has taken measures to regulate, and reviewed regularly, the investment models, types of investment products, returns and expenses on management fees of the aforesaid funds; if it has, of the details; if not, the reasons for that;*
- (4) *of the fees paid by the 11 aforesaid funds on investment management in each of the past three years, and how such amounts compare with the relevant fees incurred by EF; the measures and mechanisms to ensure that management fees for the funds concerned are cost effective, so as to avoid fund capital and government injections being depleted by excessive or unreasonable management fees; and*
- (5) *whether it has conducted any study on pooling the moneys of various funds and entrusting them to HKMA for investment; if it has, of the*

outcome of the study; if not, the reasons for that and whether it can do so immediately?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, information including the investment returns, investment management fees and monitoring mechanism of the funds established/or with injection made by the Government since 2008 but outside the government accounts is set out at the Annex.

These funds were established with specific purposes and modes of operation. To cater for their respective needs, the investment strategies of these funds are also different. Some of the funds use their investment returns to meet their operational needs, whilst some make use of both investment returns and the capitals. Besides, the investment strategy of individual funds may be regulated by the legislation under which the funds were established.

Hence, we should not judge whether the investment returns of individual funds are satisfactory simply by looking at the revenue and expenditure of the funds. It is neither appropriate to compare the investment returns and management fees of a particular fund with those of the Exchange Fund.

As regards the monitoring mechanism of investments, there are different supervisory regimes in place for individual funds. The supervisory authority or committee concerned will closely monitor the external investment environment and review the investment strategy according to individual needs, so as to fulfil the purpose and investment objectives of the funds.

The funds have different policy objectives of establishment, background, scale, mode of operation, asset liquidity need and investment objectives. Therefore, it may not be operationally feasible to pool the moneys of all the funds to a designated institution (for example, the Exchange Fund) for investment. The bureaux or government departments concerned will continue to keep in view the latest situation and views on the management of funds and benefits of investments, so that the investment returns will be able to serve the purposes and needs of the respective funds.

Annex

Various Funds outside the Accounts of
the Government Established by Government⁽¹⁾

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
Language Fund	Education Bureau	The Fund places fixed deposits with banks. The interest rates on deposits are as follows: 2010-2011: \$20.70 million (0.73%-1.95%) 2011-2012: \$21.02 million (1.26%-2.30%) 2012-2013: \$13.07 million (0.72%-1.31%)	No deficit. The Fund can use its capital to meet expenditure.	Not applicable. The Fund operates according to section 5(1) of the Permanent Secretary for Education Incorporation Ordinance and now places fixed deposits with banks for investment. It is the Fund's policy that all investments in financial instruments should be principal-protected.	The Fund selects banks with good credit standing, strong financial strength and sizeable capital. The Fund also limits the individual risk exposure, in accordance with the documented risk management strategy and places each deposit with the most competitive rate offered by bank.	Not applicable	Not applicable
HKSAR Government Scholarship Fund (HGSF)	Education Bureau	2010-2011: \$65 million (6.6%)* 2011-2012: \$52 million (4.1%) 2012-2013: \$58 million (2.7%)	No deficit. The expenditure of the Fund is met by the investment income generated, but use of capital may be considered under exceptional circumstances. The capital of the Fund was not used in the past.	The HGSF Investment Committee (IC) regularly reviews the Fund's investment target, strategy and asset allocation with a view to achieving the long-term target return, that is, a return that can support the expenditure by the	The Fund adopts prudent investment strategies and manages its risk and investments taking into account the changes in the economic market conditions. The Fund's IC regularly reviews the Fund's investment performance and takes	The HGSF appoints an investment manager(s) and custodian(s) with fees as follows: as a percentage of the Fund's average net asset value for the Financial Year: 2010-2011: 0.30%	The Fund's IC regularly reviews the Fund's investment performance with a view to achieving cost-effectiveness.

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
				investment income generated.	follow-up actions, where necessary.	2011-2012: 0.23% 2012-2013: 0.18%	
Self-financing Post-Secondary Education Fund (SPEF)	Education Bureau	The SPEF was established in November 2011. The investment returns in the past two years are as follows: 2011-2012: \$21 million (1.1%) 2012-2013: \$40 million (1.2%)	The expenditure of the Fund is met by the investment income generated, but use of capital may be considered under exceptional circumstances. As the Fund is in the start-up stage, a small amount of principal has been used to meet the expenditure.	The SPEF IC regularly reviews the Fund's investment target, strategy and asset allocation with a view to achieving the long-term target return, that is, a return that can support the expenditure by the investment income generated.	The Fund adopts prudent investment strategies and manages its risk and investments taking into account the changes in the economic and market conditions. The Fund's IC regularly reviews the Fund's investment performance and takes follow-up actions, where necessary.	The SPEF appoints an investment manager(s) and custodian(s) with fees as follows: as a percentage of the Fund's average net asset value for the Financial Year: 2011-2012: Not applicable 2012-2013: 0.03%	The Fund's IC regularly reviews the Fund's investment performance with a view to achieving cost-effectiveness.
Research Endowment Fund	Education Bureau	The Fund only invests its endowment through placements with the Exchange Fund. Interest on the placements is payable at a fixed rate determined every January. The interest rates for the years 2011, 2012 and 2013 are as follows: 2011: 6.0% 2012: 5.6% 2013: 5.0%	No deficit. The expenditure of the Fund is met by the Investment income generated, but use of capital may be considered under exceptional circumstances. The capital of the Fund was not used in the past.	The Research Endowment Fund only invests its endowment through placements with the Exchange Fund.	The investment management and control of the Fund are set out in a documented risk management and investment strategy and are reviewed on a regular basis by the University Grants Committee.	Not applicable	Not applicable

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
		Interest income from placements with the Exchange fund is as follows: 2010-2011: \$1,163 million 2011-2012: \$1,190 million 2012-2013: \$1,303 million					
Education Development Fund	Education Bureau	The Fund places fixed deposits with banks. The investment return and range of interest rates on deposits were as follows: 2010-2011: \$1.86 million (0.90%-1.80%) 2011-2012: \$5.98 million (1.33%-1.76%) 2012-2013: \$8.84 million (0.54%-1.40%)	No deficit. The Fund can use its capital to meet expenditure.	Not applicable. The Fund operates according to section 5(1) of the Permanent Secretary for Education Incorporation Ordinance and now places fixed deposits with banks for investment. It is the Fund's policy that all investments in financial instruments should be principal-protected.	The Fund selects banks with good credit standing, strong financial strength and sizeable capital. The Fund also limits the individual risk exposure, in accordance with the Fund's own documented risk management strategy and places each deposit with the most competitive rate offered by bank.	Not applicable	Not applicable
Environment and Conservation Fund (ECF)	Environment Bureau	The investments are mainly fixed deposits with banks. Bank interests for the past three years were: 2010-2011: \$6.4 million (0.7%) 2011-2012: \$17.2 million (1.5%)	Before 2013, ECF had been relying on capital injection of the Government, instead of investment return, to fund various community green action projects.	In June 2013, the Finance Committee of the Legislative Council approved a capital injection of \$5,000 million into ECF, so as to generate investment returns for long term and	The ECF IC has been set up to formulate investment policies and monitor investment of the ECF.	Not applicable	The ECF IC reviews the investment strategy from time to time. Making a credit facility arrangement with the HKMA is a cost effective arrangement.

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
		2012-2013: \$21.7 million (2.0%)		sustained support for community green actions. The ECF subsequently placed \$4,700 million with the HKMA in the form of a credit facility arrangement for earning investment return.			
Samaritan Fund	Food and Health Bureau	Interest income: 2010-2011: \$9.1 million (0.7%) 2011-2012: \$14.4 million (1.3%) 2012-2013: \$168.9 million (2.7%)	No deficit. The injection of one-off grant of \$10 billion by the Government in 2012-2013 can support the continued operation of Samaritan Fund for about 10 years from then.	In accordance with the Resolution of the Legislative Council on the Samaritan Fund, all moneys accruing to the Fund shall be paid to Hospital Authority (HA) which shall credit such moneys to an account entitled "Deposits-Samaritan Fund, HA". In view of the increase in fund size following the injection of \$10 billion to the Fund in 2012-2013, additional measures have to be put in	HA has established governance mechanism for the Fund's investment management. HA's Treasury Panel and Finance Committee play an advisory role in the Fund's treasury and investment management. In addition, the Samaritan Fund Management Committee, which is co-chaired by the representative of the Food and Health Bureau and Chief Executive of the HA, monitors the	Not applicable	Not applicable

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
				<p>place to improve the investment return and safeguard the integrity of the funds. \$6 billion has been placed with the HKMA by HA for six years while the remaining \$4 billion was immediately vested in the Fund to cater for the recurrent expenditure of the Fund in the coming few years.</p> <p>To make better use of public resources and to enhance the sustainability of the Fund, HA has all along adopted a prudent and conservative approach in managing the funds while meeting the operating cash flow requirements of the Fund. HA's guiding principles in investment are capital preservation</p>	<p>financial position and reviews the investment arrangement of the Fund.</p>		

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
				and to invest those funds that are not immediately required in low risk investments.			
Cantonese Opera Development Fund (CODF)	Home Affairs Bureau	2010-2011: \$212,000 (0.2%) 2011-2012: \$1,054,000 (1.3%) 2012-2013: \$4,164,000 (5.6%)	CODF was first set up from private donations. Its aims are to provide funding support to projects and activities relating to the study, promotion and sustainable development of Cantonese opera. The Government subsequently injected \$69 million to CODF in 2010. From 2010-2011 to 2012-2013, the CODF granted about \$27.4 million to sponsor projects relating to development of Cantonese opera. The investment gains of the CODF in these three financial years (about \$5.43 million) helped supplement the grants paid from it.	The CODF IC was established in 2010 to advise on matters relating to the investment of the Fund. With the advice of the IC, the CODF had an investment gain at 5.6% in 2012-2013.	The CODF IC holds regular meetings to review the investment performance. The investment proposals suggested by the IC have to be approved by the Secretary for Home Affairs Incorporated.	Not applicable	Not applicable

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
Community Care Fund (CCF)	Home Affairs Bureau	2010-2011: <\$1,000 (0.0%) 2011-2012: \$181.444 million (5.5%) 2012-2013: \$298.855 million (4.6%)	No deficit. Apart from the returns from investment, the CCF could also deploy its seed capital for the expenditures of its operation.	A deposit of \$15 billion in total has been placed with the HKMA to earn an investment return. The remaining amount of the CCF funding has been deposited with banks for Hong Kong dollar and Renminbi time deposit, so as to earn interest income and meet the cash flow requirements for financing the assistance programmes and other liquidity needs.	The Commission on Poverty and the CCF Task Force will continue to monitor the CCF's investment position.	Not applicable	Not applicable
Elite Athletes Development Fund (EADF)	Home Affairs Bureau	The EADF was established in 2011-2012. The investment return in the past two years were: 2011-2012: \$602,000 (0.0%) 2012-2013: \$284.440 million (4.1%)	No deficit. Apart from the returns from investment, the EADF could also deploy its seed capital to provide funding support to the Hong Kong Sports Institute.	In accordance with the principles approved by the Finance Committee of the Legislative Council, the majority of the seed capital (\$6 billion) is deposited with the HKMA to earn an investment return. The remaining capital of \$1 billion is	Under the monitoring of HKMA and Home Affairs Bureau.	Not applicable	Not applicable

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
				deposited with banks to provide readily available funding. There is no need to change the investment arrangements.			
Sir David Trench Fund for Recreation (Arts and Sport Development Fund) (ASDF)	Home Affairs Bureau	2010-2011: \$145 million (6.7%) 2011-2012: -\$103 million (-3.2%) 2012-2013: \$163 million (5.4%)	No deficit.	The ASDF Investment Advisory Committee regularly reviews the Fund's investment target, strategy and asset allocation with a view to achieving the long-term target return, that is, supporting the expenditure by the investment income generated.	The Fund adopts prudent investment strategies and manages its risk and investments in response to the economic and market conditions. The Fund's Investment Advisory Committee, which is mainly composed of non-official members, regularly reviews the Fund's investment performance and takes follow-up actions, where necessary.	The Fund appoints an investment manager(s) and custodian(s) with fees as follows: as a percentage of the Fund's average net asset value for the Financial Year: 2010-2011: 0.03% 2011-2012: 0.01% 2012-2013: 0.01%	The Fund's Investment Advisory Committee regularly reviews the Fund's investment performance with a view to achieving cost-effectiveness.
Elder Academy Development Foundation	Labour and Welfare Bureau	2010-2011: \$70,276 (0.513%) 2011-2012: \$161,214 (1.243%) 2012-2013: \$184,198 (1.045%)	Expenditures required from the Foundation are financed by government funding, donations solicited and investment	Since the Foundation's capital is limited (around \$15 million to \$20 million), which has to be used from	The Director of Social Welfare Incorporated provides an annual financial statement to the Legislative Council to	Not applicable	Not applicable

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
			incomes, hence the concept of incomes not meeting expenditures is not applicable. Since the funding under the Foundation has to be used from time to time to support the activities of Elder Academies, it is invested in short term fixed deposits to secure stable returns.	time to time to fund allocation to Elder Academies, it is appropriate to invest it in fixed deposits at present.	report the income, expenditure and balance of the Foundation.		
Employees Retraining Fund	Labour and Welfare Bureau	2010-2011: \$33.3 million (0.88%) 2011-2012: \$47.6 million (1.53%) 2012-2013: \$34.5 million (1.47%)	The income sources of the Employees Retraining Board (ERB) include the Employees Retraining Levy, government funding, and so on. As such, we cannot only use the investment income to assess whether ERB's income meets its expenditure. The ERB deposited all moneys of the Fund that are not immediately required to be expended in	The Finance Committee of the Legislative Council approved the injection of \$15 billion into ERB on 24 January 2014. ERB is discussing with the HKMA on the investment arrangement for the injection, intending to place a substantial portion of the Employees Retraining Fund with HKMA to earn an investment return.	The Finance and Administration Committee under the Board of ERB monitors the financial situation and report to the Board.	Not applicable	Not applicable

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
			banks on fixed term or call deposits or in a savings account, in accordance with section 8(3)(a) of the Employees Retraining Ordinance (Cap. 423) from 2010-2011 to 2012-2013.				
Beat Drugs Fund (BDF)	Security Bureau	2010-2011: \$53 million (1.9%) 2011-2012: \$162 million (4.6%) 2012-2013: \$272 million (7.5%)	No deficit.	Not applicable	BDF adopts prudent investment strategies and manages its risk and investments in response to the changes in the economic and market conditions. In addition, BDF has set up an Investment Subcommittee, which is composed of members from the business, finance and accounting fields. The Subcommittee will regularly review the fund's investment objectives, strategies and asset allocation, with a view to	The BDF appoints an investment manager(s) and custodian(s) with fees as follows: as a percentage of the fund's average net asset value for the Year: 2010-2011: 0.07% 2011-2012: 0.14% 2012-2013: 0.26%	Not applicable

<i>Name of Fund</i>	<i>Bureau</i>	<i>Investment Return⁽²⁾ (Question Part 1)</i>	<i>Financial Position (Question Part 2)</i>	<i>Improvement on investment return (Question Part 2)</i>	<i>Supervision of investment fund (Question Part 3)</i>	<i>Management Fee (Question Part 4)</i>	<i>Ensuring cost-effectiveness of management fee (Question Part 4)</i>
					monitoring the investment performance of the fund.		

Notes:

- (1) The listed funds do not include the funds inside the government accounts, such as Sustainable Fisheries Development Fund and the Maritime and Aviation Training Fund, and funds established under section 29 of the Public Finance Ordinance (Cap. 2) for example, Capital Works Reserve Fund, and so on. Furthermore, since the Urban Renewal Trust Fund was not set up with government funding, it is also not included.
- (2) Except for the Education Development Fund, Language Fund, the HGSF, the SPEF and the Research Endowment Fund whose accounting year is from 1 September to 31 August of next year, the accounting year of the other funds is from 1 April to 31 March of next year.
- * Unless otherwise specified, the figure in bracket denotes the rate of return.

Implementation of Fire Safety (Buildings) Ordinance

16. **MR WU CHI-WAI** (in Chinese): *President, the Fire Safety (Buildings) Ordinance (Cap. 572) (the Ordinance), which has come into operation since 2007, stipulates that the fire safety of composite and domestic buildings constructed on or before 1 March 1987 must be enhanced to better meet the requirements of today. It is learnt that quite a number of owners' corporations and minority flat owners of buildings have encountered difficulties in making improvements to the fire service facilities of their buildings in order to comply with the Ordinance. Although the Government has repeatedly indicated in its replies to questions raised by Members of this Council that it would, without compromising basic fire safety, adopt a flexible and pragmatic approach in handling individual cases, quite a number of minority flat owners have relayed to me that they are unclear about the criteria adopted by the Fire Services Department (FSD) and the Buildings Department (BD) for enforcing the Ordinance flexibly, making it difficult for them to comply with the Fire Safety Directions (FS Directions) issued by the two departments. In this connection, will the Government inform this Council:*

- (1) *as the Government indicated in July last year that it would conduct inspections on target buildings throughout Hong Kong in two phases, whether it has completed inspections of the some 9 000 buildings under the first phase; if it has not, of the anticipated*

completion time; if it has, whether it has launched the second phase of inspections; if so, of the progress and the respective numbers of buildings inspected under the two phases, broken down by District Council (DC) district;

- (2) among the buildings inspected under the first phase, of the respective numbers of buildings in respect of which: (i) the authorities have not issued any FS Directions, (ii) the authorities have issued FS Directions which have been complied with, (iii) the authorities have issued FS Directions which have been partially complied with, (iv) the authorities have issued FS Directions all of which have not been complied with, and (v) the authorities have issued FS Directions and subsequently exempted the owners concerned from complying with such FS Directions as well as the contents and total number of FS Directions compliance with which has been exempted;*
- (3) among the buildings in respect of which FS Directions have been issued and fully complied with, of the numbers of those which involved (i) installation of water tanks, (ii) installation of hose reel systems, (iii) structural building works, (iv) non-structural building works, and (v) adoption of alternative proposals (with a breakdown by the type of such alternative proposals);*
- (4) of the criteria, legislation or guidelines based on which the authorities decide whether or not to accept alternative proposals, for example, the criteria based on which the authorities will consider accepting the alternative proposal of obtaining water directly from town mains for automatic sprinkler systems of those composite buildings with commercial portions not exceeding four storeys; whether the authorities will promulgate to the minority flat owners their criteria for vetting and approving alternative proposals, so that minority flat owners will know what alternatives they may consider in respect of compliance with FS Directions;*
- (5) whether it will draw reference from the alternative proposal mentioned in part (4) and consider allowing owners of residential buildings to adopt the same alternative proposal, that is, allowing the fire-fighting systems of residential buildings to obtain water directly from town mains; if it will not, of the reasons for that; and*

- (6) *whether it has compiled statistics on the average works expenses borne by each flat owner of buildings for compliance with FS Directions in the past five years, with a breakdown by the number of households in the building; as quite a number of owners have indicated that it is difficult for them to raise funds for paying the related works expenses, whether the authorities will accept more alternative proposals of different types, so as to relieve burdens of minority flat owners?*

SECRETARY FOR SECURITY (in Chinese): President, the Ordinance came into operation on 1 July 2007. The Ordinance stipulates that the fire safety of composite and domestic buildings constructed on or before 1 March 1987 should be enhanced to better meet the requirements of today. There are notable differences between the fire safety requirements at the time of the construction of those old buildings and the modern standards. For instance, the commercial portions of the composite buildings were not required by law at that time to install automatic sprinkler systems. Enhancements are therefore necessary.

The FSD and the BD will issue FS Directions to owners and/or occupiers with regard to fire service installations and fire safety constructions in those buildings, with a view to enhancing their basic fire protection measures. The BD is the enforcement department for fire safety measures on the planning, design and construction of buildings, while the regulation of fire service installations and equipment falls under the purview of the FSD.

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

- (1) The FSD and the BD conduct joint inspections on target buildings in Hong Kong by two phases. The first phase covers about 9 000 old composite buildings and the second phase covers about 3 000 old domestic buildings. It is expected that the first phase of inspection will be completed around the end of 2015 whilst the second phase will commence in 2016.

As at the end of January 2014, the FSD and the BD have inspected a total of 7 090 old composite buildings. The breakdown of the number of target buildings inspected by DC districts is at Annex 1.

- (2) The FSD issued 92 336 FS Directions to owners and occupiers of 3 895 target buildings, out of the 7 090 old composite buildings inspected. Of the FS Directions issued, 25 795 FS Directions (about 28%) have been complied with. FS Directions have not yet been issued to the remaining 3 195 target buildings.

Of the 3 895 target buildings issued with FS Directions, 50 of those have fully complied with the FS Directions issued by the FSD. For how many of the remaining buildings have partially complied with FS Directions and how many of those have not complied at all, the FSD does not have readily available statistics. However, the department advised that the majority of those buildings have complied with some relatively easy requirements such as providing emergency lighting in their commercial portions.

In implementing the Ordinance, the FSD will consider the circumstances and constraints of individual buildings and adopt a flexible and pragmatic approach in dealing with the relevant requirements of fire service installations and equipment. Among the 3 895 buildings mentioned above, nine buildings⁽¹⁾ were unable to install fire service water tanks for the operation of hose reels due to structural and spatial constraints. Having thoroughly considered the justifications submitted by owners and/or authorized persons⁽²⁾ engaged by them, the FSD exempted such buildings from the requirement of installing fire service water tank and hose reel, and approved the use of manual fire alarm system and fire extinguisher as alternatives. There were also 1 815 buildings which were given approval by the FSD to be exempted from installing fire hydrant and hence the capacity of the fire service water tank required could be significantly reduced. Some buildings were also approved by the department for using improvised automatic sprinkler system or improvised hose reel system as alternatives, or converting fresh or flushing water tank into water tank for the hose reel system, and so on.

- (1) Among these nine buildings, three buildings have fully complied with the FS Directions, whilst the deadlines of FS Directions for the remaining six buildings are yet to expire.
- (2) Authorized persons refer to the architects, engineers or surveyors registered under the Buildings Ordinance (Cap. 123).

- (3) Among the 50 buildings which have fully complied with FS Directions, 24 were required to install additional fire service water tanks and fire hydrant/hose reel systems, which involved structural building works. The remaining 26 buildings were not required to install additional fire service water tanks and fire hydrant/hose reel systems, but were required to enhance their existing fire hydrant/hose reel systems or install additional manual fire alarm systems and fire extinguishers as alternatives. Those works did not involve structural building works. The FSD advised that for 34 out of those 50 buildings, flexibilities or alternatives put forward by their building owners were allowed in some of the requirements in the FS Directions. A breakdown of the relevant measures/alternative proposals is at Annex 2.
- (4) The FSD is aware that individual buildings might not be able to fully comply with the requirements due to structural or spatial constraints. On these special circumstances, the FSD will, without compromising basic fire safety, adopt a flexible and pragmatic approach in handling individual cases. The FSD has also formulated internal guidelines to assist officers concerned in enforcing the Ordinance. The FSD officers may consider dealing with some of the requirements in a flexible manner or accepting the alternatives put forward by the building owners in the light of the circumstances of individual buildings and/or the information submitted by authorized persons in relation to the execution of the FS Directions, such as the height of the buildings and whether there are spatial constraints and so forth. For example, if there are spatial constraints in the installation of a hose reel system and/or water tank, the department may consider allowing the installation of an improvised hose reel system⁽³⁾ and conversion of a fresh or flushing water tank into the water tank for the hose reel system, and so on, in the concerned buildings.

The FSD advised that if the commercial portions of target composite buildings are required to install automatic sprinkler systems and the

(3) An improvised hose reel system includes a hose reel water tank with a capacity of less than 2 000 litres, a hose reel drum installed at a higher position and a hose reel of reduced length.

associated water tanks⁽⁴⁾ but there are structural or spatial constraints, the department will consider allowing the installation of improvised automatic sprinkler systems (that is, the water supplies for the systems may come from direct connection from town mains or the shared use of the water tank of the fire hydrant/hose reel systems) in the light of the circumstances of individual cases and the information submitted by authorized persons. However, due to the constraint on water pressure, the proposal of obtaining water directly from town mains for the improvised sprinkler systems is only applicable to a composite building with the commercial portions not exceeding 15 m (that is, normally not more than four storeys).

The FSD issued a departmental Circular Letter No. 3/2007 "Fire Service Installations and Equipment required under the Fire Safety (Buildings) Ordinance" to fire service installation contractors and authorized persons in August 2007 (see Annex 3), which stated that the FSD would adopt a flexible and pragmatic approach in implementing the Ordinance, and set out some circumstances under which flexible handling of the requirements might be considered. The Circular Letter has been uploaded to the FSD's website for reference by the trade and the general public. Furthermore, the FSD's case officers are prepared to meet with owners or authorized persons engaged to explain to them the FS Directions and assist them in solving potential problems associated with the engineering works.

- (5) According to the FSD, the domestic portions of target composite buildings and domestic buildings are not required to install automatic sprinkler system, but are required to install fire hydrant/hose reel systems. To ensure water supply would not be contaminated and to avoid illegal use of water from town mains, water supply to the fire hydrant/hose reel system must not come directly from town mains according to Chapter 9 of the Hong Kong Waterworks Standard Requirements of the Water Supplies Department. Therefore, the FSD cannot approve fire hydrant/hose reel systems with water supply directly from town mains for domestic portions of composite

(4) In accordance with the Ordinance, if the total floor area of the commercial portions of a target composite building exceeds 230 sq m, the relevant commercial portions are required to install automatic sprinkler systems. Such is not required in the domestic portions of composite buildings.

buildings or domestic buildings. The FSD has also indicated that from the operational point of view, as the fire hydrant/hose reel systems are required to cover a larger area of the building and require a higher water pressure to operate, the stability of water supply for the fire hydrant/hose reel systems cannot be fully guaranteed if water for fire hydrant/hose reel systems is fed from town mains directly without being initially stored in a water tank. The systems might not function effectively if water pressure was inadequate.

- (6) The FSD does not have statistics of the work expenses borne by building owners for compliance with the FS Directions. To assist owners of private buildings to maintain and repair their buildings, the BD, the Hong Kong Housing Society and the Urban Renewal Authority run financial assistance schemes for property owners in need, including the Building Safety Loan Scheme, Integrated Building Maintenance Assistance Scheme and Building Maintenance Grant Scheme for Elderly Owners. Fire safety improvement works pertaining to the Ordinance have been incorporated into the list of works eligible for subsidies or loans under these schemes. The application procedures of these schemes have also been streamlined. Owners may apply for multiple schemes by completing a set of application forms under the Integrated Building Maintenance Assistance Scheme. The FSD will, from time to time, review its flexible and pragmatic measures and the circumstances under which flexible handling of the requirements can be considered, with a view to assisting those buildings in genuine need to comply with the requirements set out in the FS Directions without compromising basic fire safety.

Annex 1

Number of target buildings inspected under the Ordinance (by DC district)

<i>District</i>	<i>Number of target buildings inspected</i>
Central and Western	910
Wan Chai	673
Eastern	476
Southern	151

<i>District</i>	<i>Number of target buildings inspected</i>
Yau Tsim Mong	1 598
Sham Shui Po	985
Kowloon City	805
Wong Tai Sin	218
Kwun Tong	179
Tsuen Wan	237
Tuen Mun	35
Yuen Long	282
North	224
Tai Po	164
Sai Kung	13
Sha Tin	48
Islands	24
Kwai Tsing	68
Total	7 090

Annex 2

Flexible and pragmatic measures or alternatives approved
for buildings that have fully complied with FS Directions

<i>Flexible and pragmatic measure/alternative</i>	<i>Number of buildings involved*</i>
For buildings not exceeding six storeys (about 20 m high), hose reel systems, but not fire hydrants, were required (the capacity of fire service water tanks required was significantly reduced to not less than 2 000 litres)	21
Exempted from increasing the capacity of the existing fire service water tanks of the buildings	4
Exempted from installing hose reel systems and water tanks, and only manual fire alarm systems and fire extinguishers were required	3
Installation of improvised automatic sprinkler systems (with a direct town mains connection or a water tank shared with fire hydrant/hose reel systems)	7

Note:

* As one of the buildings adopted two measures/alternatives, the total number of buildings involved exceeds that of buildings which have fully complied with the FS Directions.

Annex 3

消防處
消防安全總區
香港九龍尖沙咀東部康莊道一號
消防總部大廈七樓北翼



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8 August 2007

To: Recipients of FSD Circular Letter

Dear Sir/Madam,

**FSD Circular Letter No. 3/2007
Fire Service Installations and Equipment
required under the
Fire Safety (Buildings) Ordinance**

The Fire Safety (Buildings) Ordinance (hereinafter referred to as the Ordinance) has come into operation on 1.7.2007. The purpose of the Ordinance is to provide better protection from the risk of fire for occupants and users of, and visitors to, composite buildings and domestic buildings constructed or with building plans submitted on or before 1.3.1987.

We understand that in many of these old buildings, construction of new works in meeting the current fire safety standards may be difficult due to structural or spatial constraints. The Ordinance therefore requires the carrying out of only those improvement works which are considered essential. The specific improvement requirements stipulated in a fire safety direction are also drawn up in a like spirit following inspection of the building concerned.

A reasonable period will be specified to allow sufficient time for owners to complete the improvement works. To avoid unnecessary spending, owners may consider carrying out such works to fulfil the requirements together with the routine maintenance works as appropriate. Besides, there might be some constraints on construction that would make compliance with the fire safety requirements difficult. In those special circumstances, relaxation may be considered on the merits of each case, taking into account such factors as the potential fire risk, floor layout, nature of uses, actual occupancy, combustible materials, etc.

Some examples of possible relaxation that may be accepted are given below for reference. They are, however, by no means exhaustive. Other improvement works or alternative methods may be acceptable provided that a reasonable level of fire safety is achieved.

- 2 -

A) Non-domestic Portion of Composite Building (overall building height not exceeding 6 storeys)

● Automatic Sprinkler System

- Will not be required if the aggregate area of the non-domestic floors does not exceed 230 m².
- Should there be structural or spatial constraints for retrofitting a standard sprinkler system, an improvised sprinkler system with a direct town's main water connection (applicable to the non-domestic portion of a height not exceeding 15 m), a connection from the existing fire hydrant/hose reel system or a sprinkler water tank of a reduced capacity may be considered acceptable.

(Note – For an improvised sprinkler system, the system alarm shall be connected to the Fire Services Communications Centre of Fire Services Department by direct telephone line.)

e.g. ~ If there is limitation on floor loading or insufficient space to accommodate a new water tank due to ownership problem.

● Fire Hydrant System

- Will not be required if direct vehicular access to the major face of the building is available.

● Hose reel System

- Should there be structural or spatial constraints, or other difficulties in providing a standard hose reel system, hose reel tubing of reduced length (i.e. hose reel drums of smaller size) or installation of hose reel drums at high level positions may be considered acceptable.

e.g. ~ If the standard provision would entail the narrowing of the means of escape to an effective width below the minimum acceptable standard.

e.g. ~ If the space at common area/staircase enclosure is insufficient to accommodate the hose reel drums.

- Fire extinguishers may be acceptable in place of a hose reel system if substantial difficulties are encountered in providing such improvised hose reels.

e.g. ~ If the means of escape will still be seriously obstructed after the installation of the hose reel system.

● Emergency Lighting

- Will not be required for separately occupied area/room which is less than 8 m² in area for accommodating a limited number of staff and located adjacent to exit routes with emergency lighting.

- 3 -

B) Non-domestic Portion of Composite Building (overall building height more than 6 storeys)

● Automatic Sprinkler System

- Will not be required if the aggregate area of the non-domestic floors does not exceed 230 m².
- Should there be structural or spatial constraints for retrofitting a standard sprinkler system, an improvised sprinkler system with a direct town's main water connection (applicable to the non-domestic portion of a height not exceeding 15m), a connection from the existing fire hydrant/hose reel system or a sprinkler water tank of a reduced capacity may be considered acceptable.

(Note – For an improvised sprinkler system, the system alarm shall be connected to the Fire Services Communications Centre of Fire Services Department by direct telephone line.)

e.g. ~ If there is limitation on floor loading or insufficient space to accommodate a new water tank due to ownership problem.

● Hose Reel System

- Should there be structural or spatial constraints, or other difficulties in providing a standard hose reel system, hose reel tubing of reduced length (i.e. hose reel drums of smaller size) or installation of hose reel drums at high level positions may be considered acceptable.

e.g. ~ If the standard provision would entail the narrowing of the means of escape to an effective width below the minimum acceptable standard.

e.g. ~ If the space at common area/staircase enclosure is insufficient to accommodate the hose reel drums.

● Emergency Lighting

- Will not be required for separately occupied area/room which is less than 8 m² in area for accommodating a limited number of staff and located adjacent to exit routes with emergency lighting.

C) Domestic Building or Domestic Portion of Composite Building (overall building height not exceeding 6 storeys)

● Fire Hydrant System

- Will not be required if direct vehicular access to the major face of the building is available.

- 4 -


- Hose Reel System
 - Should there be structural or spatial constraints, or other difficulties in providing a standard hose reel system, hose reel tubing of reduced length (i.e. hose reel drums of smaller size) or installation of hose reel drums at high level positions may be considered acceptable.
 - e.g. ~ If the standard provision would entail the narrowing of the means of escape to an effective width below the minimum acceptable standard.
 - e.g. ~ If the space at common area/staircase enclosure is insufficient to accommodate the hose reel drums.
 - Fire extinguishers may be acceptable in place of a hose reel system if substantial difficulties are encountered in providing such improvised hose reels.
 - e.g. ~ If the means of escape will still be seriously obstructed after the installation of the improvised hose reel system.

D) Domestic Building or Domestic Portion of Composite Building (overall building height more than 6 storeys)

- Hose Reel System
 - Should there be structural or spatial constraints, or other difficulties in providing a standard hose reel system, hose reel tubing of reduced length (i.e. hose reel drums of smaller size) or installation of hose reel drums at high level positions may be considered acceptable.
 - e.g. ~ If the standard provision would entail the narrowing of the means of escape to an effective width below the minimum acceptable standard.
 - e.g. ~ If the space at common area/staircase enclosure is insufficient to accommodate the hose reel drums.

This Department will continue to adopt a flexible and pragmatic approach in handling cases in which owners encounter practical difficulties in complying with the new fire safety standards. Should you have any questions on this Circular Letter, please contact the Senior Divisional Officer of the Building Improvement and Support Division at 2272 9177.

Yours faithfully,


(Aaron Y.C. CHEUNG)
for Director of Fire Services

Statistics on Visitors to Hong Kong

17. **MR KENNETH LEUNG** (in Chinese): *President, the number of visitor arrivals to Hong Kong has been rising continuously in the past 10 years, surpassing 54 million last year. Regarding the travel patterns of these visitors, will the Government set out in the table below a breakdown, by source market (Mainland China, short-haul markets, long-haul markets and new markets), of the number of visitor arrivals to Hong Kong (with a further breakdown by the number of nights they stay), their average length of stay and their average per capita spending in Hong Kong in each of the past five years?*

Year		2013	2012	2011	2010	2009
<i>Mainland China</i>						
<i>Visitor arrivals</i>	<i>Same-day visitor</i>					
	<i>Stay one to two nights</i>					
	<i>Stay three nights or more</i>					
	<i>Entry by land</i>					
	<i>Entry by sea</i>					
	<i>Entry by air</i>					
<i>Average length of stay (night)</i>						
<i>Average per capita spending in Hong Kong</i>						
<i>Short-haul markets (excluding Mainland China)</i>						
<i>Visitor arrivals</i>	<i>Same-day visitor</i>					
	<i>Stay one to two nights</i>					
	<i>Stay three nights or more</i>					
<i>Average length of stay (night)</i>						
<i>Average per capita spending in Hong Kong</i>						
<i>Long-haul markets</i>						
<i>Visitor arrivals</i>	<i>Same-day visitor</i>					
	<i>Stay one to two nights</i>					
	<i>Stay three nights or more</i>					
<i>Average length of stay (night)</i>						
<i>Average per capita spending in Hong Kong</i>						
<i>New markets</i>						
<i>Visitor arrivals</i>	<i>Same-day visitor</i>					
	<i>Stay one to two nights</i>					
	<i>Stay three nights or more</i>					
<i>Average length of stay (night)</i>						
<i>Average per capita spending in Hong Kong</i>						

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, according to the information provided by the Hong Kong Tourism Board (HKTB), the annual visitor arrivals, the average length of stay of overnight visitors and the average per capita spending of same-day and overnight visitors by major market segments (that is, Mainland China, short-haul, long-haul and new markets) in the past five years (2009-2013) are set out in the table below:

Year		2013	2012	2011	2010	2009
<i>Mainland China</i>						
Visitor arrivals	(a) Same-day visitors	23 655 768	19 801 023	14 500 361	11 006 333	8 293 166
	(b) Stayed for one to two nights	10 275 942	8 714 633	7 611 336	6 383 520	5 025 395
	(c) Stayed for three nights or above	6 813 567	6 395 739	5 988 432	5 294 535	4 638 170
	(A) Entered Hong Kong via land transport	33 920 048	29 193 317	23 073 865	18 537 059	14 679 246
	(B) Entered Hong Kong via sea transport	2 267 373	1 904 415	1 741 997	1 403 806	1 127 522
	(C) Entered Hong Kong via air transport	4 557 856	3 813 663	3 284 267	2 743 523	2 149 963
Average length of stay of overnight visitors (nights)		3.4	3.7	3.9	3.9	3.4
Average per capita spending of overnight visitors (HK\$)		\$8,813 ⁽¹⁾	\$8,565	\$8,220	\$7,453	\$6,620
Average per capita spending of same-day visitors (HK\$)		\$2,721 ⁽¹⁾	\$2,489	\$2,439	\$2,356	\$2,352
<i>Short-haul markets (excluding Mainland China)</i>						
Visitor arrivals	(a) Same-day visitors	3 660 468	3 700 336	3 738 535	3 620 749	3 191 794
	(b) Stayed for one to two nights	3 247 240	3 334 239	3 367 517	3 253 472	2 690 896
	(c) Stayed for three nights or above	2 009 157	1 922 512	1 941 843	1 779 441	1 506 682
Average length of stay of overnight visitors (nights)		2.9	2.8	2.8	2.8	2.7
Average per capita spending of overnight visitors (HK\$)		\$5,897 ⁽¹⁾	\$5,911	\$5,713	\$5,088	\$4,314

<i>Year</i>		<i>2013</i>	<i>2012</i>	<i>2011</i>	<i>2010</i>	<i>2009</i>
Average per capita spending of same-day visitors (HK\$)		\$894 ⁽¹⁾	\$740	\$872	\$779	\$810
<i>Long-haul markets</i>						
Visitor arrivals	(a) Same-day visitors	1 321 496	1 343 559	1 366 341	1 318 094	1 179 627
	(b) Stayed for one to two nights	1 700 603	1 757 408	1 781 863	1 790 714	1 625 113
	(c) Stayed for three nights or above	1 614 563	1 645 664	1 625 082	1 583 473	1 439 811
Average length of stay of overnight visitors (nights)		4.0	4.0	3.9	3.9	3.4
Average per capita spending of overnight visitors (HK\$)		\$7,518 ⁽¹⁾	\$7,449	\$7,213	\$6,667	\$5,086
Average per capita spending of same-day visitors (HK\$)		\$444 ⁽¹⁾	\$453	\$557	\$473	\$530
<i>New markets⁽²⁾</i>						
Visitor arrivals	(a) Same-day visitors	265 651	245 629	275 921	276 710	197 463
	(b) Stayed for one to two nights	285 855	270 577	281 639	296 888	222 783
	(c) Stayed for three nights or above	328 367	298 258	307 903	306 543	209 767
Average length of stay of overnight visitors (nights)		3.7	3.7	3.6	3.5	3.3
Average per capital spending of overnight visitors (HK\$)		\$7,263 ⁽¹⁾	\$7,484	\$6,948	_ ⁽³⁾	_ ⁽³⁾
Average per capita spending of same-day visitors (HK\$)		_ ⁽⁴⁾	_ ⁽⁴⁾	_ ⁽⁴⁾	_ ⁽³⁾⁽⁴⁾	_ ⁽³⁾⁽⁴⁾

Source of statistics : The HKTB

Notes:

- (1) Provisional statistics
- (2) Russia, Members of the Gulf Co-operation Council, India, Vietnam and the Netherlands are categorized as the "new markets". The above statistics relating to the short-haul markets and long-haul markets cover the information of these new markets. In response to Member's question, the relevant information of these new markets is now reproduced under this separate item.
- (3) Overnight visitor spending statistics are derived from the HKTB's Departing Visitor Survey. The said survey has started to compile the breakdown of visitor statistics of the new markets (that is, Russia, Members of the Gulf Co-operation Council, India, Vietnam and the Netherlands) since 2011.
- (4) The data is not available due to insufficient sample size of the same-day visitors from new markets to render the statistics reliably.

Quality of Sub-degree Programme Graduates

18. **MR ABRAHAM SHEK** (in Chinese): *President, it has been reported that according to the Survey on Opinions of Employers on Major Aspects of Performance of Sub-degree Graduates in Year 2010 released recently by the Education Bureau, the score for the overall performance of those graduates as assessed by employers has hit a record low among the same surveys over the past decade. In this connection, will the Government inform this Council:*

- (1) *whether it knows the graduation rates of sub-degree programme students in each of the past five years;*
- (2) *as the aforesaid survey reveals that the performance score for English language proficiency of sub-degree programme graduates is on the low side among the various attributes, whether the Education Bureau has assessed the causes for this situation; if it has, of the results and improvement measures in place; if not, the reasons for that;*
- (3) *as self-financing sub-degree programmes offer more than 30 000 places each year, whether the authorities will draw up a set of common academic standards to be attained by graduates of such programmes so as to ensure the quality of the graduates; if they will, of the details; if not, the reasons for that; and*
- (4) *whether it will conduct in the near future a comprehensive review on the way forward in respect of sub-degree programmes; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President, we place equal emphasis on both quality and quantity in our policy objectives to promote the post-secondary education, in the hope that our young people can be equipped with appropriate attitude, skills and knowledge when they join the workforce, while being successful in their study and having their potential unleashed. To this end, the Education Bureau has commissioned a consultant to conduct an opinion survey among employers every three years or so to collect data on the job performance of graduates from post-secondary programmes and the feedback of employers.

- (1) As there are various factors affecting the time of graduation of students pursuing post-secondary programmes and some may take a longer time to graduate, generally speaking, institutions do not compile statistics on the graduation rates and the Education Bureau can only provide the number of graduates. According to the information provided by institutions, the respective number of sub-degree graduates in the last five years is tabulated below:

<i>Year</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Number of sub-degree graduates	19 832	21 608	22 530	22 662	24 872

- (2) The most recent employers' opinion survey covered students graduated from full-time locally-accredited publicly-funded and self-financing first degree and sub-degree programmes in 2010. The survey sought to capture information about graduates' performance in nine major aspects — language proficiency (English language and Chinese language), work attitude, analytical and problem-solving abilities, numerical competency, information technology literacy, inter-personal skills, management skills, technical skills and knowledge of current affairs and self-learning ability.

The survey results show that employers were generally positive about the performance of sub-degree graduates at the workplace. About 93% of the respondents found the performance of these graduates average or above and the overall performance score was 3.35 out of 5. For all the nine major aspects of performance, the average score was above 3, that is, between "generally meets the employers' requirements" and "sometimes exceeds the employers' requirements". As a matter of fact, the overall performance score of sub-degree graduates was generally stable over the past decade (2000-2010), fluctuating within a narrow margin between 3.35 and 3.44. At the same time, it is inappropriate to make a direct comparison between the overall performance scores of graduates in different years as the coverage varies. After discounting the score for the newly-introduced aspect (knowledge of current affairs and business issues, self-learning ability and self-esteem), the overall

performance score of sub-degree graduates of 2010 should be 3.38, which compares favourably to the score of 3.36 of their counterparts in 2000. This is elucidated in the executive summary of the survey report to put readers in the context.

For English language proficiency, sub-degree graduates of 2010 achieved a score of 3.13, which indicates that the employers surveyed considered their performance "generally met the employers' requirements" and "sometimes exceeded the employers' requirements". Moreover, as much as 80% of the surveyed respondents were of the view that the English language proficiency of these graduates met or exceeded their requirements.

In fact, the Education Bureau has been providing various support measures to help improve the language proficiency of post-secondary students. Among them includes setting up the three-year Quality Enhancement Grant Scheme (QEGS) in 2009 to support one-off worthwhile non-works projects or initiatives that help enhance the quality of teaching and learning of self-financing post-secondary programmes. During the roll-out period of the Scheme, the Education Bureau approved a total of 16 English enhancement projects for students and the total funding involved exceeded \$20 million. Building on the successful experience of the QEGS, the Education Bureau set up the Quality Enhancement Support Scheme under the Self-financing Post-secondary Education Fund in 2012 to render continued support to the self-financing post-secondary sector in launching projects that help enhance teaching and learning effectiveness as well as learning experience. One of the major aspects of these projects is to enhance students' language proficiency.

- (3) A sub-degree (including Associate Degree and Higher Diploma) is a valuable standalone qualification as well as a pathway to further studies or employment. According to the surveys of graduates in 2012 conducted by institutions (with a response rate of 84% out of the 24 872 graduates from full-time sub-degree programmes), 53% pursued further studies and 42% were engaged in employment.

To promote and enhance the quality of sub-degree programmes offered by post-secondary institutions, the Education Bureau has implemented the following initiatives:

- (i) A set of Common Descriptors (CDs) for Associate Degree and Higher Diploma programmes was promulgated in 2009 for the compliance of sub-degree programme providers and quality assurance bodies. The CDs, setting out the requirements in areas such as entrance requirements, curriculum content and learning outcomes, were further updated in 2010 to tie in with the implementation of the New Academic Structure. Under the revised CDs, applicants are eligible to apply for admission to Associate Degree or Higher Diploma programmes if they attain Level 2 in five Hong Kong Diploma of Secondary Education (HKDSE) subjects including Chinese Language and English Language;
- (ii) Sub-degree programmes must be locally-accredited before relevant information could be uploaded to the Information Portal for Accredited Post-secondary Programmes (iPASS) and the Qualifications Register;
- (iii) A Handbook on Good Practices in Quality Assurance for the sub-degree sector was published in 2010 to set out the essential principles and practices in quality assurance; promote the sharing of good practices among institutions; enhance quality assurance consistency across the sector; and further improve the overall quality of the sector; and
- (iv) The Liaison Committee on Quality Assurance, comprising representatives from the Education Bureau, the Hong Kong Council for Accreditation of Academic and Vocational Qualifications, the Joint Quality Review Committee and the Quality Assurance Council of the University Grants Committee, keeps in view matters related to quality assurance (such as ensuring the compliance of CDs among relevant parties); promotes sharing of good practices among all quality assurance bodies; and increases consistency and transparency so as to enhance public accountability.

- (4) Looking ahead, we anticipate a declining population in the relevant age cohort. While the Government is committed to providing our young people with flexible and diversified study pathways with multiple entry and exit points, we believe it is time to consolidate the sub-degree sector by enhancing the programmes in both quality and quantity. Implementation and incremental enhancement of policies is a cyclic process. On quantity, the Education Bureau has maintained communication with the education sector to address relevant issues. The Committee on Self-financing Post-secondary Education established in April 2012 has served as an effective platform for discussing among the sector macro and strategic issues, including the supply and demand of places for post-secondary education to facilitate institutions in making appropriate adjustments to their programmes and number of places. On quality, we believe that only quality programmes could ensure sustainable development. Institutions are aware that they must improve the quality of teaching and learning and promote the development of professional and vocational training with due regard for the long-term manpower needs of the community, so as to ensure employers' recognition of the quality of graduates and the qualifications that programmes lead to.

Prevention of Cruelty to Animals

19. **MR CHAN HAK-KAN** (in Chinese): *President, some concern groups on animal interests have said that the penalties under the Prevention of Cruelty to Animals Ordinance (Cap. 169) (the Ordinance) lack deterrent effect, and that the authorities have failed to provide sufficient resources to curb acts of cruelty to animals. In this connection, will the Government inform this Council:*

- (1) *of the number of animal cruelty cases in respect of which applications for appeal were lodged by the Department of Justice (DoJ) last year on the ground that the penalties imposed were too lenient, as well as the results of the appeals;*
- (2) *given that at present the senior veterinary officers of the Agriculture, Fisheries and Conservation Department (AFCD) are authorized to arrest any person who is suspected to have treated animals cruelly,*

as well as to enter and search the buildings where suspected cases of animal cruelty are occurring or have occurred, whether the Government will consider amending the Ordinance to authorize all officers of the Veterinary Officer grade in the AFCD to exercise such powers concerned so as to enhance the efficiency of the law-enforcement actions;

- (3) *whether it has plans to consider afresh establishing an animal police team which is dedicated to investigating and following up animal cruelty cases; if it has, of the details; if not, the reasons for that; and*
- (4) *whether it will consider enacting legislation to make it compulsory for persons who have been convicted of animal cruelty offences to receive psychological counselling and attend courses on promoting kindness to animals?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, over the years, the Government has been seeking to promote in the community a caring culture for animals. The Ordinance aims at combating acts of cruelty to animals. For the purpose of enhancing co-operation among the government departments and organizations concerned on this issue, the AFCD, in conjunction with the Hong Kong Police Force (the police), the Food and Environmental Hygiene Department (FEHD) and the Society for the Prevention of Cruelty to Animals (Hong Kong) (SPCA), set up a working group in 2011 to examine the work on handling such cases. The police, in collaboration with the AFCD, the SPCA, veterinary associations and animal concern groups, introduced the Animal Watch Scheme in 2011 to step up the efforts in combating animal cruelty cases.

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

- (1) According to information provided by the DoJ, it did not lodge any application to the Court for review of sentences in respect of cruelty to animal cases in 2013. However, in accordance with section 104 of the Magistrates Ordinance (Cap. 227), the DoJ applied to a magistrate to review his decision in one of such cases on the grounds that the penalty imposed was too lenient. The magistrate granted the application for a review and finally changed the original sentence from an imprisonment of three months to seven months.

- (2) It is stipulated under sections 4(1) to 4(4) of the Ordinance that any senior veterinary officer may arrest any person suspected of cruelty to animals, seize any animal or article concerned, enter and search any building in which he may suspect that any offence against any provisions of the Ordinance is committed. According to the interpretation of the Ordinance, "senior veterinary officer" includes any veterinary officer authorized by the Director of Agriculture, Fisheries and Conservation to perform the duties of a senior veterinary officer under the Ordinance. At present, the AFCD goes about enforcing provisions in the Ordinance in a generally smooth manner. The Government has no plan to change the existing arrangement.
- (3) Most of the animals involved in the reports on suspected cruelty to animals are stray cats and dogs found in secluded locations (such as rear lanes). That being the case, law-enforcement officers will encounter difficulties in collecting and adducing evidence. That, however, does not deter them from making their best endeavours to conduct investigations for bringing to justice those who committed cruelty to animals. Investigations by the departments concerned showed that most of the cases reported did not involve cruelty to animals.

The Animal Watch Scheme introduced in 2011 as mentioned above aims to consolidate collaboration among various stakeholders and strengthen the police's efforts in the investigation of animal cruelty cases. The Scheme is supported by two professional veterinary associations, namely the Hong Kong Veterinary Association and China (Hong Kong) Veterinary Association. Both associations encourage their members to report suspicious persons or suspected animal cruelty cases. All cases of cruelty to animals reported to the police are currently investigated by crime investigation teams, which possess the professional knowhow and experience required to follow up cases of cruelty to animals amongst other criminal cases. Depending on the geographical distribution and profile of cases, the police will consider deploying special teams to tackle the cases with a view to delivering early results through more focused and robust investigations. These arrangements allow the police to deploy its limited resources flexibly in conjunction with the Scheme, thereby

enhancing effectiveness in combating animal cruelty cases. Hence, the Government has no plan to establish an animal police team.

In fact, we consider that public education is most important for safeguarding and promoting animal welfare. To this end, the AFCD has established a dedicated team to devise, implement and fortify public education and publicity programmes for promoting care for animals and responsible pet ownership. The relevant activities include producing announcements in the public interest to be broadcast on TV and radio; advertising on such platforms as public transport, magazines and websites; organizing promotional events in shopping arcades; regularly conducting village and community campaigns; holding talks in schools; as well as conducting annual surveys on pet care. We will continue our efforts in this regard.

- (4) Currently the Government has no plan to amend the legislation to make it compulsory for persons convicted of animal cruelty offences to receive psychological counselling or attend courses on caring for animals. As the motives and underlying reasons for committing the offences could well vary in different cases, it may not be appropriate to require every person convicted of animal cruelty offences to receive mandatory psychological counselling.

Air Pollutant Emissions from Aircraft

20. **MR ALBERT CHAN** (in Chinese): *President, at the Council meeting on 19 October 2011, I asked the authorities about the emission levels of various types of air pollutants from aircraft movements and aircraft parking at the Hong Kong International Airport (HKIA) each year between 2009 and 2010, and whether the authorities had taken measures to reduce the emissions from aircraft so as to alleviate the problem of air pollution in Tung Chung and thereby reduce the impact of air pollutants on the health of Tung Chung residents. The authorities indicated in their reply that they had taken measures to reduce emissions of air pollutants and carbon from aircraft. Yet, residents in Tung Chung have still relayed to me that the number of flights operating at HKIA has been growing constantly in the recent three years and aircraft emissions have also increased correspondingly, hence worsening the air quality in Tung Chung*

and affecting the health of the residents in the district. In this connection, will the Government inform this Council:

- (1) whether it knows the emission levels of various types of air pollutants from aircraft movements and aircraft parking at HKIA each year between 2011 and 2013, with a breakdown, by aircraft model in table form, of the emission levels of various types of air pollutants from aircraft, as well as which aircraft model had the highest level of emissions, and what measures currently have been put in place by the authorities to reduce emissions from aircraft of such models;*
- (2) whether it has assessed if the worsening of the air quality in Tung Chung in recent years is related to the increase in air pollutant emissions from aircraft; if the assessment outcome is in the affirmative, to what extent the increase in emissions from aircraft has led to the worsening of air quality in Tung Chung; if the assessment outcome is in the negative, of the reasons for that; and*
- (3) whether it will take new measures to reduce the impact of the air pollutants emitted by aircraft on the health of Tung Chung residents; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

- (1) The numbers of arrival and departure of aircraft at the HKIA between 2011 and 2013 and the air pollutant emissions in 2011 are set out in Table 1. As the compilation of air pollutant emissions for 2012 and 2013 is underway, we cannot provide the aircraft emission data for these two years.

Aircraft emissions of sulphur dioxide, nitrogen oxides, respirable suspended particulates, volatile organic compounds and carbon monoxide accounted for 1%, 4%, 1%, 1% and 3% of Hong Kong's overall emissions respectively in 2011.

The total quantities of air pollutants emitted from individual model of aircraft depend on various factors including the numbers of their

arrivals and departures in a year, the type, size and number of their engines. Even for aircraft of the same model, they may not have engines of the same types or sizes and could have different quantities of emissions. In general, bigger aircraft with higher arrival and departure frequencies will have greater quantities of emissions. Based on the aircraft arrival and departure data of the HKIA in 2011 released by the Civil Aviation Department (CAD), the percentage shares of emissions for different types of aircraft are set out in Table 2.

Air pollutants emissions from different types of commercial aircraft vary with the engine design, aircraft size and passenger load. The CAD has adopted the standards set out at Annex 16 to the Convention on International Civil Aviation (hereinafter referred to as "the Chicago Convention"), Volume 2, Part III, Chapter 2 (Turbojet and turbofan engines intended for propulsion only at subsonic speeds) to certify engines on commercial aircraft registered in Hong Kong. This document specifies the standards for four types of emissions that an aircraft engine has to meet, namely, smoke, unburned hydrocarbons, carbon monoxide and nitrogen oxides. Commercial aircraft registered elsewhere also meet generally the standards set out at Annex 16 to the Chicago Convention. To reduce their air pollutant emissions, aircraft that use the HKIA are required to meet the international standards for aircraft engine emissions.

- (2) Apart from aircraft emissions, air quality in Tung Chung is also influenced by regional air quality and other local emission sources. Over the past three years, the air pollutant concentration data recorded at the Tung Chung general air quality monitoring station did not reveal any apparent change in air quality as a result of the increase in aircraft movements. There was a slight decrease in respirable suspended particulates concentrations in Tung Chung whereas concentrations of sulphur dioxide, nitrogen dioxide and ozone, an air pollutant related to regional photochemical smog problem, were relatively steady. Please refer to Table 3 for the detailed data.
- (3) Since 22 October 2009, the CAD has implemented new air routes which shorten the travelling distance for aircraft approaching from

the west and north of Hong Kong. Hence, a flight to Hong Kong from the Mainland, South East Asia and Europe can save up to about 210 km in flight journey, that is about 14 minutes in flight time. The shortened air routes and the reduced flight time can help reduce aircraft's air pollutant emissions. In 2013, a total of 70 000 flights adopted these shortened routes. Besides, the CAD will continue to implement international standards in certifying aircraft engines, and to closely monitor and follow the international requirements in this respect.

Since the operation of the HKIA, the Airport Authority (AA) has been providing electricity powered fixed ground power (FGP) and pre-conditioned air (PCA) systems for aircraft at parking stands to reduce the operation time of onboard fuel combustion auxiliary power generation units, and thereby reduce emissions. In 2011, about 80% of passenger flights have adopted the FGP and PCA systems. The AA is going to mandate the use of FGP and PCA at parking stands before end of 2014 with a view to further reducing aircraft emissions.

Table 1: The Number of Aircraft Arrivals and Departures at the HKIA from 2011 to 2013 and Air Pollutants Emissions in 2011

<i>Year</i>	<i>Number of Aircraft Movements⁽¹⁾</i>		<i>Annual Air Pollutant Emissions⁽²⁾ (in Tonnes)</i>				
	<i>Aircraft Arrivals</i>	<i>Aircraft Departures</i>	<i>Sulphur Dioxide</i>	<i>Nitrogen Oxides</i>	<i>Respirable Suspended Particulates</i>	<i>Volatile Organic Compounds</i>	<i>Carbon Monoxide</i>
2011	166 919	166 887	304	4 770	58	329	2 340
2012	175 861	175 823	Estimation is in progress				
2013	186 047	186 028					

Notes:

- (1) Source of aircraft movements data: Civil Aviation Department
- (2) Source of air pollutants emissions data: Environmental Protection Department

Table 2: Percentage Shares of Emissions from Individual Models of Aircraft in the Total Emissions from Aircraft in 2011

<i>Aircraft Model</i>	<i>Sulphur Dioxide</i>	<i>Nitrogen Oxides</i>	<i>Respirable Suspended Particulates</i>	<i>Volatile Organic Compounds</i>	<i>Carbon Monoxide</i>
B747	30%	34%	54%	27%	26%
B777	19%	24%	8%	28%	28%
A330	22%	19%	11%	15%	18%
B737	7%	5%	5%	8%	7%
A320	6%	5%	7%	5%	6%
A340	4%	5%	5%	7%	5%
A321	2%	2%	3%	1%	2%
B767	2%	1%	1%	1%	1%
A319	1%	1%	1%	1%	1%
A380	1%	1%	0%	0%	1%
Other Models	5%	4%	4%	5%	5%

Source: Environmental Protection Department

Table 3: Annual Average Concentration of Air Pollutants recorded at Tung Chung Air Quality Monitoring Station from 2011 to 2013

<i>Air Pollutant</i>	<i>Annual Average Concentration (ug/cu m)</i>		
	<i>2011</i>	<i>2012</i>	<i>2013[#]</i>
Sulphur Dioxide	13	13	14
Respirable Suspended Particulates	47	45	42
Nitrogen Dioxide	51	43	49
Ozone	44	47	44

Source: Environmental Protection Department

Note:

2013 data are preliminary data

North East New Territories New Development Areas

21. **MR LEUNG KWOK-HUNG** (in Chinese): *President, the Government has repeatedly told this Council and the media that owing to the shortage of land or opposition from the local communities, several projects such as building subvented residential care homes for the elderly (RCHEs), columbaria and waste management facilities could not be implemented. Quite a number of members of the public have relayed to me that as most of the areas of the land in the North East New Territories New Development Areas (NDAs) are undeveloped and NDAs have a relatively smaller population, NDAs can provide the land needed for building the aforesaid facilities, and it is also believed that opposition from the local communities in NDAs would be relatively less than that in other developed areas for implementing such projects. Regarding the land planning of NDAs, will the Government inform this Council:*

- (1) *as the Government indicated in its reply to a question raised by a Member of this Council in November last year that land would be reserved in NDAs for building RCHEs, of the areas of the lands reserved and the number of subvented RCHEs that can be built, as well as the number of places to be provided by those RCHEs;*
- (2) *as the Government indicated in its reply mentioned in part (1) that land would be reserved in NDAs for the development of a hospital, of the area of the land reserved and the number of beds to be provided in the new hospital; whether the Government has reserved land for building subsidized infirmaries; if not, how the Government solves the problem of the shortage of subsidized infirmary places;*
- (3) *as the Government indicated in its reply mentioned in part (1) that land would be reserved in NDAs for building subsidized housing, of the respective areas of the lands reserved for public rental housing (PRH) estates and Home Ownership Scheme (HOS) courts, as well as the respective numbers of flats to be provided in the PRH estates/HOS courts concerned;*
- (4) *whether the Government has reserved lands in NDAs for building columbaria; if so, of the areas of the lands reserved and the number of columbaria that can be built, as well as the numbers of large and*

small niches to be provided in those columbaria; if not, how the Government addresses the shortage of niches;

- (5) whether the Government has reserved lands in NDAs for building funeral parlours; if so, of the areas of the lands reserved and the number of funeral parlours that can be built, as well as the number of mourning halls to be provided in those funeral parlours; if not, how the Government ensures that funeral services are adequate;*
- (6) as the Government has indicated that there is an urgent need to develop integrated waste management facilities with incineration as the core technology, whether the Government has reserved lands in NDAs for building such facilities; if so, of the areas of the lands reserved, and how many tonnes of wastes can be processed by such facilities each day; if not, how the Government implements projects for building such facilities;*
- (7) whether the Government has reserved land in NDAs for developing a new landfill; if so, of the area of the land reserved, and how many tonnes of wastes the new landfill can take in per day; if not, how the Government solves the problem of the existing landfills nearing exhaustion; and*
- (8) whether the Government has reserved land in NDAs for building a centralized quarantine centre for live poultry, so as to step up the related quarantine work; if so, of the area of the land reserved, as well as the number of live poultry the quarantine centre can quarantine per day; if not, how the Government addresses the need for quarantine of imported live poultry?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the objectives for the implementation of NDAs are to cater for the long-term requirement on housing demand of residents and Hong Kong's social and economic development. In July last year, we announced the North East New Territories (NENT) NDAs Project (NDAs Project), which included results of the Stage Three Public Engagement of the NENT NDAs Planning and Engineering Study (the Study), the revised Recommended Outline Development Plans (RODPs) for the Kwu

Tung North (KTN) and Fanling North (FLN) NDAs, as well as the arrangements for implementing the NDAs Project, including the mode of implementation and the compensation and rehousing arrangements for the affected households and farmers. Details concerning the NDAs Project have already been set out in the paper submitted to the Legislative Council Panel on Development on 15 July 2013 (LC Paper No. CB(1)1461/12-13(01)).

Under the NDAs Project, we will proceed with development of the KTN and FLN NDAs, as extension to Fanling/Sheung Shui New Town, with a view to addressing the housing (particularly subsidized housing) and other development needs of Hong Kong. Upon completion of the NDAs, the overall population of the Fanling/Sheung Shui/Kwu Tung New Town will reach around 460 000 (with an additional population of 173 000 in the KTN and FLN new town extension areas). As the overall development will be of a relatively large scale, it will be capable of providing comprehensive commercial, retail, community, recreational and cultural facilities, as well as various types of job opportunities, thus realizing a more effective sharing of resources.

After consulting the Food and Health Bureau, Labour and Welfare Bureau, Environmental Protection Department and Planning Department, the consolidated reply to various parts of the question is as follows:

- (1) Accommodation for four RCHEs has been reserved in Areas 13 and 24 in KTN and Area 15 in FLN. The number of RCHEs places to be provided will be confirmed at the detailed design stage.
- (2) A site about 4 hectares has been reserved for the proposed hospital, polyclinic and general clinic/health centre in Area 28 in KTN. It is expected that the planned hospital could provide 580 beds.

To meet the community's healthcare needs, the Hospital Authority (HA) would continue to closely keep in view and conduct projections on the demand of medical services in various districts, including the NENT NDAs, and plan for the provision of various healthcare facilities. In planning for the provision of public healthcare services and facilities, including the number and types of beds, such as acute, specialist, rehabilitation/convalescence, infirmary, palliative care, day beds, and so on, the HA will take into

account various factors, including forecast of demand for medical services of the district according to population growth and demographic changes; growth rate and forecast of service needs for specialist services; and possible changes in the utilization patterns, and so on.

To meet the future healthcare needs of the North District as a whole, we have also reserved a site adjacent to the North District Hospital (NDH) on top of the site reserved for medical use in NENT NDAs. The site adjacent to NDH, which has an area of approximately 30 000 sq m, could facilitate the future expansion of NDH to provide additional beds and increase the service capacity when such a need arises. The medical services as well as the number and type of beds to be provided will be planned according to the prevailing demand.

- (3) KTN and FLN NDAs will provide a total of about 60 000 new flats. The ratio of public to private housing for the KTN and FLN NDAs would generally maintain at about 60:40 to ensure a balanced and socially integrated community. About 39 hectares of land in KTN and FLN NDAs have been reserved for subsidized housing, providing about 36 600 subsidized housing units. In order to enhance the flexibility, about 33 hectares of the land are reserved for PRH/HOS use or a mix of them, providing about 31 700 flats. The mix of PRH and HOS units within individual sites could be further determined by the Transport and Housing Bureau at the time of implementation of the developments taking account of the demand. The remaining about 6 hectares of land are reserved for HOS development which could supply about 4 900 flats.
- (4) According to the information from the Food and Health Bureau, to increase the supply of public niches, the Government has been promoting the district-based columbarium development scheme. In this connection, we have identified 24 potential sites in 18 districts for columbarium development. Whether these 24 potential sites could eventually be used for developing columbarium facilities will depend on the results of the technical feasibility studies or traffic impact assessments (where applicable). Upon completion of the relevant studies, we will consult the relevant District Councils (DCs)

before going firm on developing the sites for columbarium use. Subject to the support of the DCs and the Legislative Council for the projects currently under planning, the supply of new niches will cumulatively increase to hundreds of thousands by 2031. No more land in KTN and FLN NDAs has been reserved for columbarium facilities.

While the Government is making every effort to increase columbarium facilities to meet public demand, we are taking steps to promote "green burial" and encourage community acceptance of this more environmentally-friendly and sustainable means of disposal of human ashes. Our work includes constructing new gardens of remembrance, providing free ferry service for the public, launching Internet Memorial Service for paying tribute to the deceased on the Internet, and stepping up public education, with a view to foster a change in mindset and culture to encourage community acceptance of "green burial" as one of the mainstream approaches.

Rising to the challenges posed by the scarcity of land resources, we see a case for encouraging public deliberations on new and unconventional measures to sustain the supply of niches to meet demand. These include setting limits on worship periods during the Ching Ming and Chung Yeung Festivals, and introducing time-limited (but renewable) terms for occupation of newly allocated niches.

- (5) According to the Food and Health Bureau, at present, there are seven licensed funeral parlours in Hong Kong. These funeral parlours provide more than 130 funeral halls with an average usage rate of about 70%.

To meet future demand, the Government plans to develop public funeral services in the Sandy Ridge cemetery. The site will be able to accommodate a funeral parlour (providing about 30 funeral halls), as well as other crematorium and columbarium facilities. It will allow us to provide one-stop service at Sandy Ridge to meet the medium- and long-term demand. The project is expected to be completed by phases from 2022 onwards. No more land in KTN and FLN NDAs has been reserved for funeral parlour.

- (6) No land has been reserved in KTN and FLN NDAs for waste management facilities. Notwithstanding this, the Preliminary Feasibility Study on Developing the New Territories North, commenced in January this year, would include assessments on the demand and feasibility of developing modern waste management facilities in the areas, such as refuse transfer station, recycling centre, food waste treatment facility, waste incineration facility, and so on.
- (7) According to the information from the Environmental Protection Department, the existing NENT Landfill is expected to be exhausted in a few years. To cope with the continuing demand for waste disposal services in the north-eastern part of the territory as well as the entire region of Hong Kong, the Government has been proposing the NENT Landfill Extension project to the southeast of the existing NENT Landfill. The NENT Landfill Extension covers about 70 hectares of land (including 38 hectares of land locating within the boundary of the existing NENT Landfill and 32 hectares of additional land), providing about 19 million cubic metres of landfill capacity. However, the above piece of land does not fall into KTN and FLN NDAs.
- (8) No land has been reserved in KTN and FLN NDAs for centralized quarantine centre for live poultry. According to the Food and Health Bureau, at present, all live poultry supplied to Hong Kong markets (including local and imported ones) are subject to stringent inspection and quarantine procedures. Before leaving the farms, poultry ready for sale must be quarantined for five days and pass both the avian influenza (AI) Polymerase Chain Reaction (PCR) test and the serological test to show that they have an adequate level of H5 antibodies and are not carrying any AI virus (including H5 and H7 sub-types) or having any AI clinical symptoms.

For chickens kept on local farms, the Agriculture, Fisheries and Conservation Department (AFCD) officers will collect their tissue and blood samples on site for AI tests by the AFCD's Veterinary Laboratory. Only when the test results are found satisfactory will the AFCD Senior Veterinary Officer concerned issue a blood test certificate and poultry transportation authorization for the

consignment of chickens, which can then be delivered to the Cheung Sha Wan Temporary Wholesale Poultry Market (Wholesale Market).

All live poultry imported into Hong Kong must come from registered farms in the Mainland. The relevant Mainland entry-exit inspection and quarantine authorities will conduct AI tests for live poultry on these farms and issue animal health certificates to consignments of live poultry with satisfactory test results before they are delivered to Man Kam To Animal Inspection Station (Man Kam To). The Centre for Food Safety of the Food and Environmental Hygiene Department will once again collect tissue and blood samples from live poultry at Man Kam To for AI tests by the AFCD's Veterinary Laboratory. To safeguard public health, the consignments of live poultry will only be delivered from the Wholesale Market to the retail outlets after test results are available.

The above testing arrangements have been operating smoothly in the past years. The Government has no plan to separately set up a central poultry quarantine centre. Notwithstanding this, on 27 January 2014, the Government confirmed a number of positive samples tested with H7 PCR test in batch of live chickens imported from a registered farm in Guangdong. In response to the requests of the poultry trade, the Government is actively exploring the feasibility of the separate holding of imported and local live poultry before the AI test results are available.

Regulation of Beauty and Skin Care Products

22. **MR CHEUNG KWOK-CHE** (in Chinese): *President, I have earlier received a complaint from a member of the public who said that she was close to nervous breakdown because she had suffered from generalized serious skin allergies, even partial skin ulceration, after using skin care products but there was no channel for her to lodge complaints. Since there is currently no statutory definition of beauty and skin care products in Hong Kong, only some of the beauty and skin care products are regulated by the Consumer Goods Safety Ordinance (Cap. 456), the Pharmacy and Poisons Ordinance (Cap. 138) and the Chinese Medicine Ordinance (Cap. 549), and so on, in accordance with their*

composition. Moreover, it is learnt that quite a number of advanced places/countries (for example, the European Union (EU), South Korea, the United States, Japan and Singapore, and so on) have long ago enacted legislation to stringently regulate the products concerned. In this connection, will the Government inform this Council:

- (1) of the total number of complaints about beauty or skin care products received by the authorities and the Consumer Council in each of the past three years;*
- (2) of the channels through which members of the public can hold the persons concerned responsible and make claims against them when they suffer from health problems after using imported beauty or skin care products;*
- (3) of the differences between Hong Kong and the aforesaid places/countries in the arrangements for the regulation of beauty and skin care products; and*
- (4) whether the authorities will consider drawing reference from the practices of the aforesaid places/countries and formulating a statutory definition of beauty and skin care products, adopting EU's practice of specifying a "responsible person" and introducing a piece of dedicated legislation to regulate such products, as well as setting up a dedicated law-enforcement organization similar to the Ministry of Food and Drug Safety in South Korea, so as to enhance the protection for consumers; if they will, of the implementation details and timetable; if not, the reasons for that?*

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

- (1) The Consumer Goods Safety Ordinance (Cap. 456) regulates consumer goods which are ordinarily supplied for private use, including beauty and skin care products. According to the Ordinance, consumer goods must comply with "the general safety requirement", which requires the goods to be reasonably safe. To

determine whether consumer goods comply with the requirement, all of the circumstances should be considered, including reasonable safety standards published by a standards institute.

If beauty or skin care products contain Western drug ingredients, they are "pharmaceutical products" as defined under the Pharmacy and Poisons Ordinance (Cap. 138). Such products must first be registered with the Pharmacy and Poisons Board before they can be legally sold in Hong Kong. For pharmaceutical products to be registered in Hong Kong, they must fulfil requirements in terms of safety, quality and efficacy. If products contain ingredients that meet the definition of "proprietary Chinese medicine" as stipulated under the Chinese Medicine Ordinance (Cap. 549), they must firstly be registered with the Chinese Medicines Board under the Chinese Medicine Council of Hong Kong, before they can be imported, locally manufactured and sold. Proprietary Chinese medicines must fulfil the requirements in terms of safety, quality and efficacy as set by the said Council in order to gain registration.

The total number of complaints about the safety of beauty or skin care products received by the Customs and Excise Department (C&ED) in 2011, 2012 and 2013 are 11, 17 and 25 respectively. The Consumer Council received one complaint in each year during the same period.

Meanwhile, the total number of complaints about pharmaceutical products and proprietary Chinese medicines received by the Department of Health (DH) in 2011, 2012 and 2013 are 102, 154 and 113 respectively. The DH does not compile separate statistics on beauty or skin care products.

- (2) The C&ED is responsible for enforcing the Consumer Goods Safety Ordinance. For beauty and skin care products, apart from investigating complaints, the C&ED conducts spot checks on wholesalers and retailers and test-purchases products for testing. The C&ED also closely monitors relevant reports and alerts issued by relevant organizations on product safety, and will take appropriate enforcement actions including the issue of prohibition notices or recall notices and initiating prosecution.

To ensure the safety and quality of pharmaceutical products and proprietary Chinese medicines, the DH has put in place a regular market surveillance system under which samples of these products are regularly collected from the market for testing. The DH has also established a mechanism for adverse incident reporting relating to drugs and Chinese medicines, so as to conduct risk assessment, management and reporting. If substandard pharmaceutical products or proprietary Chinese medicines are found, the DH may take actions such as ordering the traders concerned to recall the products and referring the cases to the relevant Board/Council for follow-up actions, and issuing relevant press statements.

From the civil perspective, if members of the public suffer from health problems after using beauty and skin care products supplied in the market (including imported products), they may seek compensation from the traders concerned through civil proceedings. Besides, the Consumer Council may assist in conciliating disputes.

(3) and (4)

As mentioned above, for regulating the safety of beauty and skin care products as consumer goods, the C&ED will, in accordance with the Consumer Goods Safety Ordinance, consider relevant reasonable safety standards, including the standards or requirements issued by the EU, the United States and the Mainland. The C&ED will take appropriate enforcement actions to protect consumers.

Beauty and skin care products which are pharmaceutical products or proprietary Chinese medicines are regulated under the Pharmacy and Poisons Ordinance and Chinese Medicine Ordinance respectively. The Food and Health Bureau points out that the regulatory mechanism established for products that are pharmaceutical products or proprietary Chinese medicines has been effective, and the Food and Health Bureau will continue its work in the relevant aspect to ensure public health.

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

PRESIDENT (in Cantonese): Bill. This Council now resumes the Second Reading debate on Stamp Duty (Amendment) Bill 2012.

STAMP DUTY (AMENDMENT) BILL 2012**Resumption of debate on Second Reading which was moved on 9 January 2013**

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

MS STARRY LEE (in Cantonese): President, in my capacity as Chairman of the Stamp Duty (Amendment) Bill 2012 (the Bills Committee), I report on the deliberations of the Bills Committee.

The Stamp Duty (Amendment) Bill 2012 (the Bill) seeks to amend the Stamp Duty Ordinance (Cap. 117) to enhance the Special Stamp Duty (SSD) (which includes adjusting upward the duty rates of the SSD and extending the holding period of the relevant property to 36 months) and introduce the Buyer's Stamp Duty (BSD). Except for certain specified exemptions and the refund of BSD for redevelopment, residential properties acquired by any person (including companies) who is not a Hong Kong Permanent Resident (HKPR) will be charged a 15% BSD on top of the existing stamp duty. Once the Bill is enacted, the new measures will be applicable to all residential properties acquired on or after 27 October 2012. The Bill has also introduced a mechanism whereby SSD and BSD rates can be revised by means of subsidiary legislation subject to the negative vetting of the Legislative Council.

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

The Bills Committee has held 22 meetings to discuss the Bill with the Administration and received views from deputations and individuals.

The Bills Committee supports, in principle, the policy intent of the Bill to curb short-term speculative activities, to accord priority to the home ownership needs of HKPRs, and to rein in the exuberance of the residential property market, so as to ensure its healthy and stable development through demand-side management measures. Members generally consider that a fundamental solution is to increase land and property supply as soon as practicable, so as to tackle the root cause of the property price spiral.

Next, I will briefly report on the issues that members are of particular concern and have divergent views.

Firstly, it is the effectiveness and impact of the demand-side management measures. Some members consider that in view of the current tight housing situation, the implementation of demand-side management measures does help to curb speculative activities and cool off the irrational market exuberance, thereby stabilizing property prices. This would in turn help minimize the risk of a property bubble and protect Hong Kong's macroeconomic and financial stability that would benefit the overall economy in the long run.

However, as residential property prices have remained at high level despite the implementation of the demand-side management measures, some members doubt their effectiveness in cooling off the overheated residential property market. Some hold that the measures have only notably reduced the volume of property transactions, but have failed to bring down property prices to a level affordable to first time local home buyers, or assist HKPRs in acquiring residential properties.

Furthermore, some members have expressed grave concerns about the measures' adverse impact on the normal market operation, the business environment, Hong Kong's overall economy and its reputation as one of the world's freest economies. Worse still, such measures might dampen the investment sentiment of local and multi-national enterprises, erode market confidence in Hong Kong and undermine Hong Kong's competitiveness in the region, thereby weakening our status as an international financial centre. Particular concerns are also raised by members on the issue of unemployment as the stagnant property market has hard hit the business of the property-related

sectors and led to unemployment. They have therefore urged the Administration to consider fine-tuning the measures.

Secondly, it is the constitutionality of the SSD and BSD. Some members consider that the SSD and BSD have deprived HKPRs of the option to purchase residential properties through companies, and doubt if this has infringed upon the fundamental rights of individuals and legal persons to the acquisition, use, disposal and inheritance of property provided for under Article 105 of the Basic Law. Some members hold that the differential treatment under the BSD measure may be discriminatory against non-HKPRs (including Hong Kong residents, foreign buyers and corporate buyers), and is in breach of Article 25 of the Basic Law which provides that all Hong Kong residents shall be equal before the law. In light of the Court of Final Appeal (CFA)'s recent judgment against the seven-year residence requirement of the Comprehensive Social Security Assistance (CSSA) Scheme, some members have raised concern about the implications of the judgment for the constitutionality of the BSD.

The Administration explains that, according to legal advice, the SSD and BSD are constitutional and are legitimate taxations governed by Article 105 of the Basic Law. Furthermore, the measures also accomplish the policy objectives of combating speculative activities and according priority to meeting the home ownership needs of HKPRs who have a close connection with Hong Kong. What is more, the BSD measure has only increased the property transaction costs of non-HKPRs and corporate buyers so as to help manage the demand on local properties, but has not prohibited non-locals from acquiring residential property. The Administration has also pointed out that the CFA's judgment is specific to the CSSA Scheme and cannot be extrapolated for general application across the spectrum of all public services.

Thirdly, it is the application of the BSD to HKPR minors and mentally incapacitated persons. The Bills Committee notes that, in order to meet the home ownership needs of HKPR minors or mentally incapacitated persons, the Bill proposes that HKPR minors or mentally incapacitated persons who acquire residential property through their guardians or trustees can be exempted from the BSD.

Some members are gravely concerned that such an exemption might be vulnerable to abuse. Non-HKPRs or parents of "doubly non-permanent resident children" might circumvent the BSD by setting up a trust, which would

undermine the effectiveness of the BSD. In response to members' concern, the Government has agreed to adopt the Committee stage amendment (CSA) proposed by Mrs Regina IP, which completely removes the BSD exemption for the acquisition of residential properties made on behalf of a minor who is a HKPR. However, some members hold different views about this CSA.

Mr Kenneth LEUNG has proposed a CSA to introduce the "domicile" concept in the definition of HKPR, providing that only those HKPRs domiciled in Hong Kong will be exempted from the BSD. At the Bills Committee meeting held on 20 December 2013, Mr LEUNG's CSA was endorsed with seven members voted for, three against and four abstained. It was resolved at the meeting that I will move the relevant CSA on behalf of the Bills Committee. Furthermore, the Bills Committee noted that Mr James TO will introduce a CSA under his own name to tighten up the proposed BSD exemption arrangement for mentally incapacitated persons. Mr Dennis KWOK has also proposed a CSA to the effect that transactions of residential properties made by HKPR minors through their trustees or guardians before the passage of the Bill must be exempted from the BSD.

Fourthly, it is the application of the BSD to companies. The Bills Committee notes that as provided in the Bill, residential properties acquired by any companies, regardless of whether the shareholders or directors are HKPRs, should be subject to the BSD. Given that acquiring residential properties in the name of a company is common in Hong Kong and enterprises have genuine need to acquire residential properties for self-use and long-term investment, some members have expressed concern that subjecting company buyers to the BSD would increase their cost of acquiring residential properties and discourage business expansion of companies, especially small and medium enterprises. Some members are of the view that the BSD should not be applied across the board to all companies indiscriminately, and have suggested that companies owned by HKPRs should be exempted from the BSD. They also propose to deter abuse by establishing a statutory declaration mechanism with heavier penalties and criminal liability.

The Administration is of the view that such an exemption of HKPRs from the BSD will create loopholes for abuse, incentivize non-HKPRs to ride on companies owned by HKPRs for BSD avoidance, as well as raise questions as to whether the proposed change is discriminatory against other types of companies and whether the long-existing principle of level playing field among companies in

Hong Kong can be maintained. The Government also maintains that even if a statutory declaration mechanism with heavier penalties is in place, the loopholes could not be effectively plugged.

Some members share the Administration's concern and express reservation about exempting companies and HKPR companies from the BSD. They consider it inappropriate to widen the scope of exemption lest it would send a wrong message to the community, calling into question the Administration's determination to stabilize the property market, and diluting the effectiveness of the measures, thereby rendering the Government's efforts futile.

At the Bills Committee meeting held on 20 December 2013, Mr Tommy CHEUNG's CSA, which seeks to allow total BSD exemption for HKPR companies meeting certain conditions, was endorsed with seven members voted for, four against and three abstained. The CSA proposed by Mr Abraham SHEK, which provides that the BSD paid by HKPRs will be refunded, subject to meeting certain conditions, was also endorsed with eight members voted for, five against and three abstained. I will move the relevant CSAs on behalf of the Bills Committee later on.

Fifthly, it is the application of the BSD to charitable institutions exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112). Some members are of the view that qualified charitable institutions acquiring residential properties as staff quarters or for charitable purposes should be exempted from the BSD, or should be granted refund of BSD, so as not to undermine their charitable activities which are in the interest of the community as a whole.

The Administration is concerned that the proposed exemption might be abused, or provide an incentive for BSD evasion by acquiring residential properties through charitable institutions. The Inland Revenue Department would have difficulties verifying whether the residential property concerned has indeed been used for charitable purpose. In order to plug the loophole, a comprehensive review of the monitoring mechanism for charitable organizations has to be conducted. Given that the measures are extraordinary measures under exceptional circumstances, this would be against the principle of proportionality. The Government has also stated that under the current market condition, it has to be careful in determining the priorities of different sectors' demands for residential properties in order to strike a right balance. To cater for the needs of the charitable institutions, it has been proposed under the Bill that gifts of

residential property to tax-exempt charitable institutions should be exempted from the BSD.

The Bills Committee notes that Mr James TO will move a CSA under his own name to exempt acquisitions of residential properties made by charitable institutions or trusts.

Sixthly, it is the adjustment of the SSD and BSD rates. Clause 16 of the Bill proposes to add section 63A to empower the Financial Secretary to, by notice published in the Gazette, adjust the SSD and BSD rates by subsidiary legislation subject to negative vetting by the Legislative Council within the specified period.

The Administration advises that the demand-side management measures are extraordinary measures introduced under exceptional circumstances. Given that the property market is extremely sensitive to changes in the external factors (such as the world economic environment and interest rates), the mechanism to adjust the SSD and BSD rates by way of subsidiary legislation can therefore provide the necessary flexibility to adjust the applicable rates (to zero if necessary) in a timely manner with reference to the latest property market situation and change in the external economic environment, with a view to ensuring the healthy and stable development of the property market.

Some members agree with the Government's explanation that taxation measures are usually introduced with immediate effect subject to negative vetting, which would prevent market prediction and speculative activities.

Nonetheless, some members consider such an arrangement undesirable as it might seriously undermine the scrutiny power of the Legislative Council and its gate-keeping role in monitoring the Government. In this connection, the Bills Committee notices that Mr James TO will move a CSA under his own name, providing that adjustments to SSD and BSD rates by the Financial Secretary should be subject to positive vetting of the Legislative Council, or by resolution of the Legislative Council. Mr Martin LIAO has also proposed a CSA under his own name to allow the SSD and BSD rates to be amended by the Financial Secretary by notice published in the Gazette, and would take effect on the day of publication. If such a motion is negated by the Legislative Council, or is not passed within six months of the date of publication of the notice in the Gazette, the notice will cease to have effect.

To safeguard the effectiveness of the BSD measure and address members' concern, the Government has subsequently proposed that it will amend the Stamp Duty Ordinance by way of a bill for any upward adjustment of the rates of SSD or BSD in future, or use the negative vetting approach where there is a need to reduce or withdraw the relevant rates. The Secretary for Transport and Housing will make a formal undertaking in respect of this arrangement during the resumption of the Second Reading debate.

Seventhly, it is the sunset clause for the demand-side management measures. The Bills Committee has discussed time and again the need to include a sunset clause for the demand-side management measures. Some members consider that the Government should set objective and quantifiable target indicators to enhance the transparency of the Government's decision on the withdrawal of the measures, so that business investors and home buyers can make an overall risk assessment and informed decision concerning home acquisition. Some members urge the Administration to consider introducing a sunset clause for the measures to give policy certainty to the business community and the general public, which is crucial to sustaining business confidence and the stable development of the property market.

On the other hand, some members have reservation about the sunset clause. Members are of the view that no single indicator could fully reflect the underlying situation of the property market. Given the complexity of the property market and the influence of external factors, it would be impractical to pre-determine a date on which the measures would be deemed no longer necessary, and it might send a wrong signal to the market and fuel demand, thus undermining the effectiveness of the measures. The Administration also undertakes to review and report to the Legislative Council one year after the Bill is enacted.

On 20 December 2013, the Bills Committee endorsed with seven members voted for, four against and three abstained that I would move the CSA proposed by Mr Tommy CHEUNG on behalf of the Bills Committee, providing that the SSD and BSD will lapse by the midnight of 31 December 2014. The CSA proposed by Mr Andrew LEUNG, providing that the relevant measure will expire by midnight on 26 October 2015, was also endorsed with eight members voted for, five against and two abstained.

Eighthly, it is the BSD refund mechanism for redevelopment. The Bills Committee notes that a person or a company who has paid BSD in respect of an instrument effecting the acquisition of a residential property for redevelopment purpose may apply for a refund of the BSD payment, provided that the construction of the redevelopment project is completed within six years, or within the time extension as permitted under the Bill.

The majority of members or deputations considered that the six-year requirement under the BSD refund mechanism for redevelopment proposed by the Administration is not flexible enough to cater for the practical steps and actual operation involved in redevelopment. Some members have also expressed concern that requiring private developers to pay the BSD as and when individual units on the lot are acquired would add to the cost of redevelopment, thereby dampening private developers' interest in redevelopment. Some members have proposed that the Government should consider advancing the refund of the BSD paid for redevelopments.

Having regard to the views of members and deputations and in pursuance of the policy intent to facilitate redevelopment, the Administration has agreed to propose a CSA to enhance the refund mechanism. Under the proposed enhanced mechanism, if the developer concerned has acquired the entire lot to be redeveloped and obtained the consent of the Building Authority (BA) to commence any foundation work for the lot; or has demolished all the original structures on the lot (other than a building the demolition of which is prohibited under any ordinance) and obtained BA's approval of the building plan for the redevelopment, it may apply for a refund of the BSD paid.

The Bills Committee notes that the timing of refund could be advanced by up to four to five years under the revised refund mechanism, and could also cater for different redevelopment scenarios and give developers greater flexibility. Members generally consider the revised refund mechanism acceptable.

Furthermore, in light of members' concerns and the views expressed by The Law Society of Hong Kong (the Law Society) and The Hong Kong Association of Banks, the Administration has agreed to propose a CSA to allow an instrument to be received in evidence in civil proceedings before a court even if it is not duly stamped with the BSD, on condition that the instrument has to be produced by a person other than the purchaser.

Noting that non-HKPR property owners or companies affected by certain legislation may be made to sell their residential properties and acquire replacement properties, the Administration will, in light of the Law Society's views, propose a CSA to extend the BSD exemption as stated in the Bill to cover five additional scenarios with legislative implications.

After deliberation, the Administration will also propose a number of CSAs to enhance the textual clarity of the Bill.

The Bills Committee held a meeting on 18 February to discuss the Government's latest proposal on the upward or downward adjustment of the rates of the SSD and BSD in future. The Bills Committee endorsed the motion moved by Mr Kenneth LEUNG with 10 members voted for and five against, to urge the Government to postpone the resumption of the Second Reading debate on the Bill, so that the Bills Committee will have adequate time to examine the latest proposal put forward by the Administration and the relevant legislative procedure.

Deputy President, the following is my views on the Bill. The Bill was published in the Gazette on 28 October 2012 and the House Committee agreed to form a bills committee on 11 January 2013. The Bills Committee has held a total of 22 meetings and spent almost 44 hours scrutinizing the Bill. Here, I would like to thank all Members, government officials and the Secretariat for their understanding, efforts, support and hard work, which have enabled the resumption of the Second Reading debate on the Bill.

Next, I will first declare that I have properties, and I am an accountant working in a company which provides consultation services on taxation for different clients. I nonetheless have not taken part in the relevant work.

Now, I am going to express the views of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) on the Bill. Before the introduction of the "curb" measures, Hong Kong's property market has been in a continuously exuberant state. In 2009, a new rising trend set in and the increase in property prices had far exceeded the growth of the real economy. In the first nine months of 2012, that is, nine months before the introduction of the "curb" measures, there was an overall increase of 20%. Property price has increased by nearly twofold over the lowest in 2008, reaching 108%. In the face of a global massive overflow of capital, extremely low interest rate environment, continuous

appreciation of Renminbi and the increasing aspiration of non-HKPRs to acquire properties, coupled with the failure of the Government to promptly regulate supply by increasing land and housing supply in the short-term or to cool off the overheated property market by freely adjusting the interest rates, Deputy President, Hong Kong's property market has entered a sick period and the notable symptoms are abundant capital, low interest rate, shortage of land, high property prices and strong demand.

The sick property market has nonetheless helped Hong Kong to take two "world number one" titles. We have been rated "the city with the most unaffordable housing market" and "the city having the highest risk of a property bubble".

Let me talk about the first "world number one". According to the findings of the International Housing Affordability Survey released by an American consultant company earlier, of the 360 international cities, Hong Kong residents' housing affordability rating (calculated by dividing the median price of private residential property by median household income) reaches 14.9. It means that even if a middle-class family completely cuts down on food and spending and pays its entire income as mortgage payment, it still takes them 14.9 years to acquire an ordinary flat. This is the highest among all surveyed cities. Even the academics conducting this survey described that "Hong Kong's housing prices are severely unaffordable". Another "world number one" is given by *The Economist*. According to its survey findings, among all economies in the world, Hong Kong has the highest risk of a property bubble.

As the property market becomes more bubbly and property prices have risen beyond the affordability of the general public, the DAB supports the Government to implement demand-side management measures (commonly known as "curb" measures) to further combat short-term speculative activities, and accord priority to meeting the home ownership needs of HKPRs when there is irrational mismatch in the supply of land and housing, with a view to cooling off market exuberance.

Deputy President, the introduction of the "curb" measures has a significant cooling-effect on the property market and the rising trend has been slowed down. One year after the introduction of the "curbs" measure in October 2012, the rising trend of property prices has been significantly slowed down. According to the Ratings and Valuation Department, following the introduction of the "curb"

measures in October 2012, the increase of price indices of general private domestic had dropped from 22.5% in previous year to 10.1%, and the increase of price index for flats exceeding 1 070 sq ft had also dropped from 11.8% in previous year to 0.9% only.

Furthermore, for smaller flats (with saleable area less than 431 sq ft) where greater increase has been recorded, property prices have increased by 8.7% in 2013, representing a sharp reduction compared with the yearly increase rate of 30.2% in 2012. Just look at the recent promotion strategies adopted by property developers in putting up the sale of new flats, we may notice that property prices of first-hand flats are now subject to immense pressure.

As evident from the news flats put up for sale by a property developer in Tin Hau earlier, the discounted average price per square foot is 20% lower than other new flats in the area. According to some analyses, it is predicted that new flats to be put up for sale by that developer later will be sold at prices on a par with the second-hand market in the area so as to boost sales. Similarly, some low density domestic developments in Yuen Long have also drastically cut down on prices to boost sales. This has triggered a price war in the first-hand and second-hand property markets in Yuen Long.

Such news relating to the sale of new flats reflected that prices of first-hand flats have been under pressure since the introduction of the "curb" measures. Judging from the market exuberance and strong demand, had the Government not introduced the Bill and the SSD to rein in market exuberance in February 2013, property prices would spiral and the public resentment that comes with it would be unpredictable.

In the face of the sick property market, the Government should administer the right prescription. What is the "right prescription" then? The so-called "right prescription" is to increase land supply and adjust the interest rate. Yet, land supply cannot be increased overnight. Also, given that our interest rate is subject to the linked exchange rate, there is no room for adjustment even if we wish to do so. Therefore, the DAB understands that the "curb" measures under discussion today are not the "right prescription", they are at best "painkillers". Instead of curing the sick property market at its root, the measures can only slow down the increase and temporarily cool off the irrational market exuberance.

(THE PRESIDENT'S DEPUTY, MR RONNY TONG, took the Chair)

Although the "curb" measures are effective in curbing the rising trend of the property market and combating speculative activities, "painkillers" are after all "painkillers" and they have many side-effects. These include:

- (1) Although the BSD only targets at non-HKPR buyers and corporate buyers, it would indiscriminately affect genuine users and investors, such as HKPR buyers acquiring residential properties in the name of companies and corporate buyers purchasing residential properties in Hong Kong for use as staff quarters. This would dampen the investment sentiment of local and multi-national enterprises, and erode their confidence in Hong Kong;
- (2) the "curb" measures have resulted in a sharp decline in transaction volume, thus dealing a heavy blow to the business of the property-related sectors, such as real estate agencies, the decoration and furniture business, the building repair and maintenance sectors, as well as the cleaning and related service sectors, and lead to unemployment; and
- (3) the "curb" measures are considered to go against Hong Kong's long-held free market principles and undermine our hard-earned reputation as the world's freest economies.

Deputy President, these side-effects have been discussed time and again in the previous meetings of the Bills Committee. Being the Chairman of the Bills Committee, I have listened to the views of Members and deputations for and against the Bill all the way through. Some of them are justified and showed an understanding that the "curb" measures would affect employees of certain sectors.

Despite the side-effects of the "curb" measures, it is obvious to all that they are effective in curbing the rising trend of the property market and combating speculative activities. What is more, the "curb" measures are supported by the general public. The findings of an opinion poll conducted by the Hong Kong Institute of Asia-Pacific Studies of The Chinese University of Hong Kong showed that 62.6% of Hong Kong people supported that the "curb" measures should be retained; 14.1% even supported that the measures be further tightened. The findings also showed that 89.2% of the general public considered the prevailing property prices too high.

Deputy President, if the "curb" measures are not passed in today's Council meeting, the consequences will be serious, for the market will immediately interpret that the Legislative Council does not consider the "curbs" essential, thereby rendering them ineffective. If the Bill is voted down, Hong Kong's property market will certainly have to face disastrous consequences with the revival of the speculative activities, and the increase in property prices will be unpredictable.

All in all, the DAB considers that the "double curbs" measures are extraordinary measures introduced under exceptional circumstances. Although they are controversial, they are indeed effective in curbing the rising trend of the property market and combating speculative activities, and have been extensively supported by the public. Therefore, the DAB supports the Bill and hopes that it will be passed as early as possible.

Deputy President, I will give an account of the DAB's position on the various CSAs during the Committee stage. Now, I will elaborate on some views in principle and responses of the DAB on various CSAs.

Firstly, it is the BSD refund mechanism for redevelopment. The DAB opines that the "curb" measures should not have any implication on redevelopment, and should avoid adding to the heavy burden of development by all means. As the six-year requirement under the BSD refund mechanism for redevelopment originally proposed by the Administration is not flexible enough to cater for the practical steps and actual operation involved in redevelopment, the DAB therefore supports the Government to propose a CSA to enhance the refund mechanism, so as to minimize the implications of the "curb" measures on redevelopment and expedite the rate of redevelopment.

Secondly, it is the removal of the exemption for HKPR minors. The DAB expresses grave concern that the exemption arrangement in respect of HKPR minors might be vulnerable to abuse. Since minors cannot protect their own interest, the exemption arrangement would incentivize non-HKPR trustees, guardians or agents to take advantage of this loophole and use the HKPR minors to evade the BSD. Therefore, the DAB supports that the Government should adopt Members' views and amend the arrangement to remove the BSD exemption for acquisitions of residential properties made on behalf of HKPR minors, so as to prevent abuse.

Thirdly, it is the CSA concerning the BSD exemption for companies owned by HKPRs. Some Members propose to grant BSD exemption to companies owned by HKPRs and charitable institutions, but the DAB considers such practice questionable. We are worried that the relevant amendment will have an implication on the market by sending a wrong message to the community that the Government is going to introduce a downward adjustment of the rates. Given that the local property market is highly sensitive to policies and messages, any suspected downward adjustment of the rates will lead to the revival of the rampant speculative activities, which is indeed the last thing that the community would want to see.

Fourthly, it is about the sunset clause. The DAB does not support the inclusion of a sunset clause in the Bill, as no one can predict when the property market will become stable again or when is the best timing for abolishing the "curb" measures. The present timeframe is proposed at will to a large extent. Therefore, the formulation of a specified timetable for abolishing the "curb" measures will inevitably plunge the property market into chaos and encourage hoarding for speculation.

Fifthly, it is the introduction of the "domicile" concept. The CSA proposed to introduce the "domicile" concept would result in significant complications and uncertainties to the actual application of the relevant provisions of the Bill. This is because the determination of one's domicile usually involves detailed examination of factual evidence and confirmation of one's state of mind. These are contentious issues and often have to be dealt with by the Court. Since the "curbs" are extraordinary measures introduced under exceptional circumstances, it would not be feasible for the Inland Revenue Department to verify the domicile of each HKPR buyer.

Deputy President, last of all, I wish to talk about the DAB's views on the adjustment of the SSD and BSD rates.

Days ago, Secretary Prof Anthony CHEUNG has undertaken to adopt a separate arrangement, meaning that any proposal for downward adjustment of the rates will continue to be dealt with by subsidiary legislation subject to negative vetting, whereas upward adjustment of the rates will be proposed by way of a new bill for deliberation and approval by the Legislative Council. In view of the rapid ups and downs of the property market, the introduction of upward or downward adjustment through negative vetting can best respond to the situation.

However, the fact is that the "curb" measures are, after all, extraordinary measures. Any proposed increase of the duty rates will definitely arouse controversies again. If the proposal is tabled at this Council for deliberation by way of a new bill, Members will have ample time for discussion, which is an ideal approach. In case of a downturn of the property market, I think there should not be any controversy if the Government decisively reduces the duty rates through negative vetting, which is more straightforward.

As a matter of fact, regardless of how the Administration introduces the "curb" measures, either in the form of subsidiary legislation or a new bill, they can be pushed through with immediate effect without undermining the effect of the Bill. Given the divergent public views on the upward or downward adjustment of the rates, the adoption of different legislative measures should give no cause for much criticism.

Deputy President, as I have pointed out in my earlier speech, despite the fact that the "curb" measures have cooled off the property market, property prices still remain high. And, at this juncture when numerous new flats are being put up for sale, we can see that prices of first-hand flats are subject to downward pressure. If the Bill fails to get through the Legislative Council today, all Hong Kong people and the community at large are bound to suffer in the end.

I hope Members will support this Bill, and on behalf of the DAB, I support the resumption of the Second Reading debate on the Bill.

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

(Ms Cyd HO requested a headcount)

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

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

DEPUTY PRESIDENT (in Cantonese): Mr Kenneth LEUNG, please speak.

MR KENNETH LEUNG (in Cantonese): Deputy President, since the Bills Committee commenced its work on 18 January 2013, the scrutiny on the Stamp Duty (Amendment) Bill 2012 (the Bill) had taken about 15 months, and a total of 22 meetings had been held, including the special meeting held yesterday, but the end result is not satisfactory.

The Bill has two major objectives, namely, to adjust the rates and application periods in respect of the Special Stamp Duty (SSD) and to introduce the concept of a Buyer's Stamp Duty (BSD).

Deputy President, originally, I supported the legislative intent and direction of the Bill, as well as most of its provisions. That was my original stand. I also consider that as a demand-side management measure, the proposal must be implemented first before its impact and effect on the market can be ascertained.

Deputy President, nonetheless, at the special meeting of the Bills Committee held yesterday, I moved a motion with no legal binding effect, requesting the SAR Government to defer the Second Reading of the Bill. The motion was passed on a vote of 10:5. Why did I move such a motion? Four or five days ago, I learnt from certain channels that the SAR Government suddenly had a proposal in relation to the adjustments to the SSD and BSD rates. Notwithstanding the provisions in the proposed section 63A that the Government can adjust the rates by notice published in the Gazette, it is learnt that Prof Anthony CHEUNG, Secretary for Transport and Housing, indicated that the Government would give an oral undertaking in the Legislative Council, to the effect that should there be a need to increase the duty rates in future, the proposal would be taken forward by way of a bill subject to the scrutiny of the Legislative Council, even though the proposed section 63A has provided another approach of making the revision. The Government also proposed that should there be a need to reduce the rates, it would still proceed by way of negative vetting.

More strangely, the proposal was disclosed by two Members of the Executive Council, rather than through an open channel. I was astonished by this course of action and considered that the legislative process of the Legislative

Council has not been given due respect. In fact, three questions of principle are involved. The first one is related to the legislative process which I mentioned just now. Does an oral undertaking given by a Director of Bureau in this Council in respect of a statutory provision — I am not referring to a policy, but a statutory provision — has legal effect?

The Secretariat provided us with a paper yesterday. According to the United Kingdom *Pepper v Hart* case (1992), the Court does not need to make reference to Hansard in construing the legislation. In other words, the Court needs not refer to Hansard for the speeches made by Members or government officials, unless the legislation concerned is very ambiguous, and I stress, the legislation must be very ambiguous.

Let me talk about another serious question of principle. The fact that the so-called oral undertaking of the Secretary was disclosed by Members of the Executive Council reflects the detached relationship between the executive authorities and the legislature. The statutory provision has been subject to stringent legal proceedings and scrutinized in accordance with parliamentary procedures, not to mention the express provision gazetted and the express provision in the Committee stage amendments (CSAs). Now that the Secretary has, after some exchanges with his buddies in the Council, revised the provision, isn't that a very bad precedent?

Moreover, such being the case, where lies the spirit of the rule of law? In case an urgent amendment of the legal provision is required, can the Secretary just say a few words and make a so-called oral undertaking and call it a day? Will Members accept such practice? Deputy President, this is definitely unacceptable.

Apart from the core issue of the rule of law, I think this so-called adjustment mechanism is defective in respect of the fiscal management and fiscal ethics of the SAR Government. Under this adjustment mechanism, the Government will proceed by way of positive vetting when adjusting the rate in one direction, but it will proceed by way of negative vetting when the rate is adjusted in the opposite direction. I have never come across such an approach in any legislation relating to taxation and Government revenue.

Another point that I am very sceptical of is that in the laws of Hong Kong, the negative vetting procedure is a well-established mechanism with proven effectiveness. In this case, I am referring to the Public Revenue Protection Ordinance (Cap. 120). Although I am aware that officials from the Transport and Housing Bureau had told the Bills Committee that as the objective of this Bill was not to generate government revenue but to regulate consumer behaviour, Cap. 120 was not applicable to this Bill. I am baffled again because under Cap. 120, its scope covers any duty, tax, fee, rate and other revenue, and nothing has been mentioned about the requirement of government revenue being the only or major consideration. Hence, if the collection of government revenue also serves another purpose, such as the regulation of certain behaviour, it should not be excluded as a form of government revenue.

Under Cap. 120, to protect public revenue, the Government may by notice in the Gazette adjust the rate of any duty, tax, and so on, with immediate effect, but the Government must effect the adjusted rate by way of legislation within four months. Otherwise, the Government will have to refund to consumers or taxpayers the excess duty or tax collected during the interim period when the gazetted temporary order is in force. This is the mechanism provided under Cap. 120.

Of course, officials from the Transport and Housing Bureau told the Bills Committee that Cap. 120 did not apply. I do not understand why it is not applicable. Is it because the Bill is under the charge of the Transport and Housing Bureau, and not the Financial Services and the Treasury Bureau?

I would like to quote from the speech made by the then Secretary for the Treasury, Miss Denise YUE, on 5 May 1999 when addressing the Council on one of the proposals in the Budget to increase the levels of fixed penalties. Miss YUE was explaining the scope of the Public Revenue Protection Ordinance, that is, Cap. 120 I mentioned just now. She said, "it is entirely proper and legal for the Public Revenue Protection (Revenue) Order ..." — under the Ordinance, the Chief Executive can make an order to alter the rates of duty and tax immediately — "... to include amendments relating to fixed penalties for traffic offences because fixed penalties constitute an income or revenue." I would like Members to focus on the statement that "fixed penalties constitute an income or revenue to the Government".

It goes without saying that fixed penalties for traffic offences are intended to regulate the behaviour of Hong Kong people, so that they will not break the law. But this objective *per se* will not change the nature of the revenue collected, which definitely constitutes a government revenue. Hence, I do not understand why the Government should forsake the established mechanism and create a new one instead.

I am also puzzled by the point that among the various types of taxation and revenue items of the Government, which ones are to be adjusted under the negative vetting procedure, and which ones are to be adjusted under the positive vetting procedure? Is there any item of revenue to which the negative vetting procedure is stipulated in the ordinance, yet another undertaking has also been made? It seems that many different approaches have been adopted, and there is no co-ordination among various Policy Bureaux of the Government. Besides, the Government fails to explain clearly to the Bills Committee, Honourable colleagues as well as Hong Kong people the rationale for adopting this approach. I am really baffled.

According to the motion with no legal binding effect that was passed by the Bills Committee yesterday, the Government was asked to include the so-called undertaking into the Bill. That should be the right approach to take. I do not intend to defer indefinitely the passage of the Bill. Deputy President, according to the meeting schedule of the Legislative Council, a short Council meeting will be held for the delivery of the Budget next week, to be followed by a short break of two weeks in early March during the sessions of the National People's Congress and the Chinese People's Political Consultative Conference. If the Government accepts the Bills Committee's recommendation and incorporates the change into the Bill, the Second Reading debate on the Bill can be resumed either on 19 or 26 March.

Deputy President, I move that the Second Reading debate on the Stamp Duty (Amendment) Bill 2012 be now adjourned in accordance with Rule 40(1) of the Rules of Procedure.

Deputy President, I so submit.

DEPUTY PRESIDENT (in Cantonese): Members, as Mr Kenneth LEUNG has moved that the debate be now adjourned, I have to deal with this motion first.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the debate on the Second Reading of the Stamp Duty (Amendment) Bill 2012 be now adjourned as moved by Mr Kenneth LEUNG.

DEPUTY PRESIDENT (in Cantonese): According to Rule 40(5) of the Rules of Procedure, Members are not allowed to move an amendment to this motion to adjourn the discussion. Secretary for Transport and Housing, do you wish to speak on this motion?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, first of all, I have to thank Ms Starry LEE, Chairman of the Bills Committee on Stamp Duty (Amendment) Bill 2012 (the Bills Committee), members of the Bills Committee and the Legislative Council Secretariat for their efforts over the last 14 months in completing the scrutiny of the Stamp Duty (Amendment) Bill 2012 (the Bill). It is by no means easy that we have come to this critical moment today. I also thank Mr Kenneth LEUNG for agreeing that the legislative process of the Bill should be completed as soon as possible. What we do not want to see today is that there are still speculations in the market about the final outcome of the Bill. Will it be struck down? Will the proposed "curb" measures be abolished, leading to market volatility? It is my regret that Mr Kenneth LEUNG has moved a motion to adjourn the debate. In response to the questions raised by Mr LEUNG just now as well as the queries raised by some Members in the last few days, I would like to give an explanation.

The Government has proposed, in the Bill, a negative vetting procedure to adjust the Special Stamp Duty (SSD) and the Buyer's Stamp Duty (BSD) rates, so as to ensure that the demand-side management measures can be adjusted in future in a timely manner in response to the market situation where necessary. This mechanism will enable the adjustments to take immediate effect after they have been gazetted, subject to subsequent scrutiny and amendments, if so warranted, by the Legislative Council. However, any subsequent amendment will only take effect after the aforesaid amendment. Given the nature of the property market, the negative vetting mechanism is in the interests of the entire community. It also addresses the concerns raised by stakeholders in the financial and property-related sectors on the need to make timely — timely is the key word — adjustment to the demand-management measures in response to the market situation, or even to abolish such measures. This mechanism is particularly

important where the relevant measures need to be tapered or even withdrawn when the market goes down.

Regarding the Committee stage amendments (CSAs) proposed by Members on this mechanism, the Government has explained at meetings of the Bills Committee why it could not accept such CSAs, and formal documents have also been submitted for such purpose. We have also stated the stance of the Government on various public occasions. The positive vetting procedures proposed by Mr James TO would prolong the whole process, and would not be able to address the market sensitive nature of the SSD and BSD rates and the need to ensure timely adjustment in response to market situation. In addition, according to the CSA proposed by Mr James TO, the adjusted rates would only apply to transactions that take place after the passage by the Legislative Council and gazettal of the subsidiary legislation. This would create a window between the announcement and the effective date of the adjustment, during which the original rates would still apply. Such an outcome would not be conducive to the market-sensitive and time-critical nature of the measures.

Regarding the CSA proposed by Mr Martin LIAO, the adjustment might take immediate effect upon the gazettal of the notice, and the Inland Revenue Department could charge the new rates of stamp duty immediately. That is similar to the effect of a Public Revenue Protection Order as mentioned by Mr Kenneth LEUNG earlier. However, if the relevant motion of the Government is not subsequently passed by the Legislative Council, or upon the expiration of a six-month period from the gazettal date, the notice would cease to have effect and the original rates would then apply, and retrospectively, thus affecting all transactions that have taken place after the gazettal. The Government would have to collect any stamp duty underpaid or refund the excessive stamp duty collected, as the case may be. This would also cause confusion and uncertainty to the market and bring practical difficulties to relevant sectors.

We do not wish to see any immediate reaction of the market in response to the need for subsequent refund or collection of any stamp duty underpaid which such a mechanism would entail. The Government reiterates that the negative vetting mechanism proposed in the Bill is an appropriate mechanism for adjusting the SSD and BSD rates. However, the Government is aware that while Members appreciate the need for a prompt adjustment of the measures through the negative vetting mechanism when the market goes down, some consider that any proposed increase in the rates should be subject to more deliberation by the

Legislative Council. We respect the different opinions expressed by Members. To strike a balance between preserving the effectiveness of the demand-side management measures and addressing the concerns raised by a number of Members, the Government is prepared to, after careful consideration, respond in good will and give a formal undertaking, that is, while we maintain that we should retain the negative vetting mechanism in the Bill for future adjustments of the SSD or BSD rates, should there be a need to increase the SSD or BSD rates in future, we would only take forward such a proposal by way of a bill, which has to go through a three-reading procedure, to amend the Stamp Duty Ordinance as in the present case.

I would like to stress that the Government is trying to adopt a practical approach which can respond to market changes promptly on the one hand, and address the views expressed by the relevant sectors and Members of this Council on the other. We have absolutely no intention to pre-empt the Legislative Council because any increase in the rates will be taken forward by way of a bill, which is subject to a three-reading procedure, this will give Members more time to scrutinize the amendments proposed in the bill. There are no loopholes in the legislative process at all.

I must reiterate that this undertaking given by the Government is certainly a formal and solemn undertaking, which will be recorded in the record of proceedings of the minutes of the Legislative Council. The Government has acted out of goodwill to address the concerns of Members with a view to allaying any unnecessary worries and ensuring the smooth passage of the Bill.

It can be said that we hope to take one extra step; this step is certainly very special and it is not totally unprecedented. In fact, there are situations in the past that even though subordinate legislation is provided in the legislation, a new bill is introduced to revise some decisions concerning charges. Therefore, my original intention is to respond proactively, and certainly I do not expect that my move is likened to "a spring breeze rippling the surface of the pond".

At the special meeting of the Bills Committee of the Legislative Council held yesterday, the Government formally submitted a paper to expound on the stance of the Government and explain why we have to take the extra step. We were aware that members had clearly stated their stances during the meeting. While some members had doubts about our approach, others had given their

support. We also tried our best to respond to the questions raised by members of the Bills Committee.

In our view, the issue on revising the SSD and the BSD rates has been thoroughly discussed at the Legislative Council. The Bills Committee had discussed for 14 months. In fact, when the Bill resumes Second Reading and when we examine the various CSAs, the Government and Members will have ample opportunities to state their stances and indicate their positions. Finally, the CSAs proposed by the Government and those proposed by Members to which the Government does not agree will be debated fully in the Legislative Council and Members will vote according to the opinions which they have formed. The society, the market and the relevant sectors have expected this Bill to be passed expeditiously, so that any uncertainty can be removed and the burden on the relevant sectors to implement the measures can be alleviated.

I would like to share some information with Members. Up till now, there are more than 3 000 transactions which may involve payment of BSD, amounting to about \$4.3 billion. Therefore, it will not be desirable for the relevant sectors, in particularly solicitor firms, to keep such a big amount of money in their custody for a long time. I hope Members will vote against the motion to adjourn the debate, so that we can resume the Second Reading debate. I would like to add that even if this motion is passed, the Government will maintain its stance, the policy objectives, as well as the legislative intent stated all along. We hope that the Bill can be read the Second time as soon as possible.

DEPUTY PRESIDENT (in Cantonese): I would like to remind Members that this Council is now dealing with the motion to adjourn moved by Mr Kenneth LEUNG. If Members wish to speak, they have to press the buttons again to wait for their turns to speak.

MR JAMES TO (in Cantonese): Deputy President, I speak in support of the motion moved by Mr Kenneth LEUNG that the resumption of the Second Reading debate of the Bill be now adjourned. I support this motion for two reasons. First, our discussion on the Bill is not thorough enough. Second, given that the Government has made such an important yet bizarre proposal involving two separate mechanisms to deal with the legislative amendments for

increasing and reducing the rates, and that the mechanisms have not even been thoroughly discussed by the Bills Committee, we must give Members or government officials the opportunity to put forth their amendments to the Bill by way of Committee stage amendment (CSA).

First of all, I must reiterate that the Democratic Party supports the "double curbs" measures. It is our utmost wish that the positive vetting procedure, as proposed by us, can be passed today; if not, we hope that the CSA proposed by Mr Martin LIAO will be adopted. Under Mr Martin LIAO's CSA, while the adjustment will take immediate effect, the Legislative Council's power of scrutiny will still be respected, and the Government is required to secure 36 votes in this Council before the validity period of the relevant notice can be extended. We opine that this eleventh-hour CSA proposed by Mr Martin LIAO, that is, just before 10th of this month, can practically cater for the Government's wish to effect the new rates immediately, and at the same time, address the demand of the Democratic Party and other Honourable colleagues that the Legislative Council be vested with the scrutiny power, such that 36 votes or more are needed to turn the notice into subsidiary legislation.

Perhaps I should clearly recount the sequence of events, so as to explain why the situation has turned into such a mess. I reckon Members would recall that a few days ago, if my memory serves me right, it should be last Friday morning, I was suddenly told by reporters that two Members, namely, Ms Starry LEE, Chairman of the Bills Committee, and Mr Jeffrey LAM, suggested that different mechanisms should be adopted for upward and downward adjustments of the rates of the "curb" measures, that is, negative vetting and positive vetting procedures. After their meeting with the Secretary, they were told by the Secretary that he would consider their proposal. Two hours later, the Secretary suddenly told us that as it was a good proposal, the Government had accepted it. Hence, for upward adjustment of the rates in future, a bill would be presented to the Council as in the present case, while downward adjustment of the rates will be subject to negative vetting.

Some colleagues had not joined this Bills Committee, but I had attended all its meetings. I hope members of the Bills Committee can testify that at dozens of meetings of the Bills Committee held over the past year or so, we had never discussed about adopting two different mechanisms to handle upward and downward adjustments of the rates, whether by way of positive vetting or negative vetting. All in all, nobody has ever been mentioned about handling

upward and downward adjustments of the rates by means of different mechanisms. The idea had neither been mentioned by the Government nor by any Member; and had never been discussed by the Bills Committee. Yet, after the Bills Committee had completed its deliberation and submitted a report to the House Committee, and even after the deadline for proposing CSAs (that is, 10th of this month), the Secretary suddenly put forward a set of new rules two hours after meeting with the two Members.

Last Saturday, that is, the day following Friday, the more I thought about it, the more uneasy I became. How can things be like that, we do not even have any discussion at all? Yesterday, Mr Kenneth LEUNG, a member of the Bills Committee, told me that he was also startled as he learnt about the proposal from the press. Some Honourable colleagues suddenly called on the Secretary after the Bills Committee had completed its deliberation; and the Secretary suddenly made a statement, overturning the whole matter. Members of the Bills Committee had spent over a year to scrutinize the Bill. I know it very well because I had been keeping the matter in view all the time. Nonetheless, they should show some respect for others. What is the attitude of the Government? Did the Government request the Bills Committee to convene a meeting so as to explain to members what had happened, or did Ms Starry LEE, our respectable Chairman of the Bills Committee, convene a meeting? As the Deputy Chairman of the Bills Committee, I ... Of course, having been a Member for years, I knew too well that such an arrangement was unacceptable and would draw strong criticisms from other Honourable colleagues. Hence, I immediately wrote to the Chairman, Ms Starry LEE, requesting for an urgent meeting. It is unacceptable for the Government to act like this. If the Government wants to take a U-turn, it is actually not a problem, so long as a clear explanation is given. It does not matter if the reason is attributed to legislative scrutiny mechanism, or to political, economic or social considerations. The Government should explain to us why downward adjustment should be effected more quickly, while upward adjustment could be effected more slowly. That is alright. Does the Government envisage a greater chance of effecting downward adjustment than upward adjustment in future? They had not given us any explanation, and no such analysis had been mentioned even at the Bills Committee meeting held yesterday. Why is that so? What does it mean? That is very strange.

Deputy President, as I see it, as we had scrutinized the Bill for more than one year, it is acceptable even if the Government comes up with an eleventh-hour proposal. In fact, there are several ways to handle the matter. Should the

Government have the breadth of spirit and breadth of vision, and should it abide by the rules, it should withdraw the notice for the resumption of Second Reading debate on its own initiative and make a statement, declaring that the Second Reading should not be postponed for too long because the Bill should be passed expeditiously from the Government's perspective. Alright, I can understand that, and so does the Democratic Party. However, I must tell the Secretary, government officials have been evasive when answering questions in the Legislative Council, and they are not answering to the question. In fact, not only Members of the pan-democratic camp are infuriated, but also Members of the pro-establishment camp because they simply do not understand the Government's action.

Moreover, the Secretary did not even attend the Bills Committee meeting held yesterday. As Members are aware, for ordinary meeting to discuss some textual amendments, say, add a comma, and so on, the attendance of the Deputy Secretary for Transport and Housing would suffice because she is most familiar with the Bill and is the right person to answer our questions, right? We all understand this arrangement and hence, we have not requested the attendance of the Secretary at all meetings of the Bills Committee. But given the important development last week as the Government had suddenly taken a U-turn, a political decision in effect, the Secretary and Under Secretary dared not attend the meeting, and an administrative officer was designated to attend the meeting to take their blame. What kind of politically accountable officials are they? That is a political decision made by the Secretary. He talked about "putting it on the table" and making concessions; that is fine, OK, but he should, from the perspective of being politically accountable, come before the Bills Committee in person to explain to members and argue it through, or even convince us all on his own. That was an opportunity for him to demonstrate his capability for he considered it the right thing to do so. Yet it turned out that he had designated a deputy secretary who could only give us evasive answers. Honestly, if you ask me, I think that Deputy Secretary had performed very well. If I were the Chief Executive or the Secretary for the Civil Service, I would give her a promotion. But the question is: She had to speak from the perspective of the Secretary, how then should she answer our questions? The Secretary should have attended the meeting himself because a very important political decision was made, not to mention that the decision was made at the very last moment.

Separately, a press conference was held by the Secretary on Friday. Yet he left after saying just a few words and reporters still wanted to ask some more

questions. Of course, I am not saying that the Secretary could only leave after no more questions were raised by reporters. In fact, the Secretary should have the courtesy to provide the transcript of the press conference to the Chairman of the Bills Committee, so that it could be forwarded to all members. The transcript should be ready by Friday afternoon, but had the Government's Information Officers performed their duties? Buddy, an important policy decision was involved; would a briefing to some media organizations be sufficient? That cannot be the case, right? What about the relationship between the executive authorities and the legislature? How should the scrutiny of legislation be proceeded?

Dr LAM Tai-fai always has a sense of humour, and some of his remarks are exceptionally shrewd. He made a statement yesterday, and when I shared it with my family at home, they all laughed their heads off. He said, from now on, the Legislative Council should no longer scrutinize bills, but undertakings. Moreover, what is an undertaking? An undertaking is not binding on the next term of Government — that was also what Secretary Prof Anthony CHEUNG told us — whereas a legislation, unless amended, is still binding on the next term of Government. That is the difference, and it involves a very important constitutional arrangement. Regarding the legal binding effect of the proposed mechanism, the Government dared not even mention it in its paper. In the opinion of the Legal Adviser of the Legislative Council, the undertaking has no legal binding effect; if the Government disagrees with such analysis, please present its reasons in black and white. Rimsky YUEN, Secretary for Justice, can give dissenting views on behalf of the Government. Nonetheless, that was not the action taken by the Government, and no analysis had been given. It only said that the undertaking was morally binding and binding on the Government; and if the next-term Government reneged on the undertaking, Members would give the Government a hard time when the Legislative Council enacted the bill by way of positive vetting procedure, so on and so forth. That is not our concern at the moment; our concern is the legal binding effect of the undertaking. It is not our concern as to whether the Government has secured enough votes; the fact remains as to whether an undertaking has legal binding effect.

Hence, the whole process is indeed queer. What is the underlying cause? Is it because the Government has acted hastily, or has it colluded with the developers, or has it subdued under their pressures? I have no way to tell. I only know that this is an unprecedented case, at least I have not come across such case during my 20-odd years of service as a Legislative Council Member.

For the moment, I will not go into the salient points of my speech to be made during the resumption of Second Reading debate on the Bill because I will have the opportunity to do so later. At this moment, I must say in brief why legal binding effect is so important. Members must understand that society as a whole has kept a watchful eye on how legal provisions are drafted. Yesterday, Dr LAM Tai-fai made an exceptionally insightful analysis. He said that about one year or so from now, candidates for the office of the next-term Chief Executive (that is, 2017) — it does not matter if we have universal suffrage or genuine universal suffrage — would start coming out to express their views on the property market, and when reporters ask them whether they consider it necessary to increase the rates under the "double curbs" measures, they may give different views, and who would have the final say? If there is a legal provision, any change to the "double curbs" measures would have to be effected by legislative amendment. But if all we have is only an undertaking, the next-term Chief Executive might very well refuse to honour undertaking, depending on which candidate wins in the election. I think Dr LAM Tai-fai's observation is incisive.

It actually makes a world of difference to incorporate the proposal in legislation, and it is the Legislative Council's function to scrutinize legislation. Oddly, when Mr James TIEN asked the Government yesterday — as we all know, Mr James TIEN is against the Third Reading of the Bill, and we have heard him say so many times — he said despite his objection to the Bill, if the Government must take this course of action and assuming that it really had enough votes to pass the Bill, then after its enactment, could the Government ... Since the Government considered the passage of the Bill a matter of urgency, if it had enough votes, then the Bill should be enacted first, but after its enactment, could the Government act with breadth of spirit, for example, by giving an undertaking that it would amend the law and introduce a bill into the Legislative Council immediately to specify that the negative vetting procedure would only be applicable for reducing the rates? That would be a very simple bill to amend one of the provisions, and its passage or otherwise would be subject to the Legislative Council's deliberation and decision. In that case, the Government would have at least completed its due work, by showing that it was sincere in making the relevant undertaking as soon as possible, and that it would affirm the undertaking in law by presenting a bill to the Council immediately after the passage of this Bill. Moreover, such a bill will not impact on the market because firstly, the "double curbs" measures have been passed; secondly, the

relevant amendment merely seeks to bind the Government legally as the Government has already stated that it would honour its undertaking. Hence, the so-called reaction of the market should be minimal.

But what did the government official tell us yesterday? I would also like to hear the Secretary's response later. The official told us that so far, they had no plan to do so. I do not know if he would have such a plan later. But at least, he should tell the public that this is an interim arrangement, and the Government will present a relevant bill to the Council shortly. However, that is not the case, and the Government has made no such undertaking.

The Government did not make this undertaking because the Government, including the Chief Executive, does not have the breadth of vision, breadth of spirit, and a sense of credibility. When a new policy is introduced by the Government, and Members of this Council consider that this policy should be confirmed through legislation, the Government should at least give Members the opportunity to propose amendments thereto. Regrettably, the deadline for proposing amendments, that is, the 10th of this month, had passed. If I suddenly proposed some amendments last night, or if some other Honourable colleagues proposed amendments, would approval be given by the President? In my view, approval will not be given by the President unless we convene an urgent House Committee meeting, and the Chairman of the House Committee recommends the President to grant leave on the ground that it is a very special case. The Government's act of taking a sudden U-turn at the eleventh hour is outrageous. What can we do? Should we ask Mr Andrew LEUNG to convene a special House Committee meeting?

The current practice of the Government is to suggest some new proposals suddenly but disallows Members to propose amendments in law. There are few possibilities to account for such an act. First, the Government was really cunning, for it deliberately made such a move after the deadline for Members to give notice of amendments, so that Members could no longer propose amendments. Second, the Government was ignorant and did not know the existence of such a rule. Third, the Government in fact had no idea what it was doing; it was dreaming and did not know what it was doing. A suggestion just came up and it went on to count the votes; as it wanted to secure enough votes, meaning that it needed our votes, the Government was willing to make an undertaking. If that is how the Government works, even if other "double curbs"

measures are to be introduced in future, it will definitely be in vain if we want to rely on the Government's proposals to stabilize the property market.

MS CYD HO (in Cantonese): Deputy President, I am not a member of this Bills Committee, but I support the adjournment motion moved by Mr Kenneth LEUNG.

According to Rule 40(1) of the Rules of Procedure, Members may move a motion without notice that the debate be adjourned. Generally speaking, Members who intend to do so would have to make a written request to the President by way of a letter, and it is up to the President to decide whether leave should be granted, so that Members will have sufficient time to make preparation. Such application can be made at the very last minute.

Nonetheless, why is Rule 40(1) invoked in the present case to move such a motion without notice? That is because things have happened too quickly and too suddenly. The last occasion when Rule 40(1) was invoked in this Council to move without notice a motion on adjournment was in 2010 when the constitutional reform package was discussed. At that time, on a Saturday some five or six days before the package was put to vote, government officials of Hong Kong and the Mainland suddenly said that the District Council proposal, which was once claimed to contravene the Basic Law, was in fact lawful and could be pursued. At that time, society as a whole knew nothing about the said proposal and hence, the Legislative Council was compelled to move a motion on adjournment.

That was the method we used at that time, in the hope that the discussion could be delayed for two weeks, so that the public or the community could learn about the contents of the latest proposal to form the basis for support or otherwise. That is also the situation in the present case. Last Saturday, I learnt from the news on television that the Bureau had asked the Secretary to give an oral undertaking when the Bill resumed the Second Reading, to the effect that should there be a need to increase the rates in future, such a proposal would be taken forward by way of a bill subject to positive vetting by the Legislative Council. Honestly, I was shocked at that moment because it was even worse than an interpretation of the Basic Law. The Legislative Council has not even taken a vote on this Bill, yet the Administration has already foretold its intention

of "building an unauthorized structure", or so to speak, outside the Bill. Why did the Government take such action?

Hence, I specifically attended the special meeting of the Bills Committee held yesterday to listen to the explanation given by the officials, so that I could get a better picture. That was why I, as a non-Bills Committee member, had the chance to peruse the amendment proposed by Mr Martin LIAO, and listened to the explanation given by attending government officials. At yesterday's special meeting, the said oral undertaking was not made, because if the Secretary were to make an oral undertaking, he should at least issue a speaking note to us for advance information. Hence, when Dr LAM Tai-fai said that he wanted to scrutinize the oral undertaking, it turned out that this could not be done. Members could only learn about it from the press and when the Secretary actually read out the undertaking, it would be recorded in our Official Record of Proceedings, and Members would have no opportunity for scrutiny. The Secretary gave an undertaking, and that was it. He would then proceed according to the procedure. Therefore, how can we accept such a procedure when we do not even have a full copy of the undertaking, or when we have no chance to know its authentic and actual contents?

In terms of the legislative procedure, Members in fact should not work behind closed doors, such that the executive authorities could lobby for sufficient votes from the legislature, and the proposal could be passed by 36 support votes from Members returned by geographical constituencies through direct elections, as well as Members returned by functional constituencies. Even though the Legislative Council is not formed by democratic elections, the public should have the opportunity to learn about the matters being dealt with by this Council. That is why all Council meetings are open meetings, and most papers are open to the public. How can we accept the Secretary's oral undertaking in place of a statutory provision, without even perusing the actual text of this undertaking, or without any media reporting and public discussion?

Yesterday, some reporters had no idea what the arguments were. If even the media do not understand what is going on, how can the public have a clear picture? When enacting legislation, we should ensure openness and transparency, and we should never work behind closed doors. Hence, Deputy President, I support the adjournment motion, so that members of the public would learn about the due process of legislation, as well as the meaning of the so-called

negative vetting and positive vetting procedures. Meanwhile, we can also take this chance to provide more examples to facilitate their understanding.

I was terribly dissatisfied with one of the replies given by the attending government official. Members attending the meeting kept saying that an oral undertaking is not a legal provision, but merely a procedure, and such procedure has already been provided in the Blue Bill, that is, the proposed section 63A, which forms part of the legislation. In other words, the procedure has been provided by a statutory provision. Hence, we must set the record straight. At yesterday's meeting or when I speak today, I have to tell government officials and the public that the procedure should be defined by law, and any procedural changes is regarded as part of the legislation. Government officers should not confuse the public by saying, in front of a camera, that this is not part of the legislation, but merely a procedure. At most, they can only say that this is not part of the principal policy. I cannot accept that a government official, with a monthly salary of over \$100,000, has ignorantly or deliberately muddled things up. Hence, I must set the record straight in this Council.

In fact, in the Interpretation and General Clauses Ordinance (Cap. 1), there is no reference to policies such as environmental protection or housing. The Ordinance only defines the role of various organizations and public offices, the role of various statutory bodies, the checks and balances among various institutions, and so on. That is also a kind of process. Although nothing has been mentioned about principal policies such as healthcare, housing and education, does it mean that Cap. 1 is not part of the legislation?

Deputy President, if we accept the Secretary's practice of using an oral undertaking to replace legislative amendment, it will set a bad precedent, giving rise to endless trouble for the future. Though Members had spent considerable time and effort in scrutinizing the provisions, and had presented their justifications for supporting or opposing the Bill, it turns out that after the Bills Committee had completed its deliberation, the Secretary could come to this Council and give an oral undertaking, the wordings of which had neither been seen by the Council or the public, to replace the scrutiny work. This approach has undermined the rule of law and sabotaged the legislative procedure. That is why we must not allow this precedent be set.

In the past, oral undertakings had been given by Secretaries when they spoke during the Second Reading of the bill. What are the main points of the undertaking? First, when the text of the legislation can be interpreted in more than one way, the Secretary concerned may make clarifications in his speech. But this practice is not too ideal because if the bills committee concerned has acted responsibly, it should have clarified all matters arisen in the course of its scrutiny, without having to wait until the Secretary gives an undertaking in his Second Reading speech.

Another situation where the Secretary concerned may give an undertaking in his Second Reading speech is in fact invariably concerned about certain administrative measures. For example, in the course of enacting the legislation to phase out diesel vehicles with a financial commitment of \$11.7 billion, we noted that the service life limit of these vehicles was 15 years at most and hence, we requested that an oral undertaking be given by the Secretary that financial assistance under the replacement scheme should be made available as soon as possible to allow for early implementation, and that supporting measures in respect of vehicle maintenance would be provided. All these involve administrative measures which are unrelated to the principal legislation. Under the circumstances, after the enactment of the legislation, we need an undertaking from the Secretary concerned in relation to these administrative matters for better co-ordination. In another example, an undertaking may be given by the Secretary concerned after the enactment of an anti-racial discrimination legislation to ensure its effective implementation and promotion, so that both employers and employees are fully aware of their rights. Those are some examples of oral undertakings given during the Second Reading. We accept such oral undertakings because in most cases, they are within the scope which Members consider to be acceptable. Moreover, such oral undertaking is not made to change the relevant legislation nor is it a kind of "ambush", a tactic adopted by the Secretary to hijack the Legislative Council and the public by taking advantage of his having the chance to speak while Members having no opportunity to propose amendment and scrutinize the undertaking.

Deputy President, the Official Record of Proceedings of the Meetings of the Legislative Council certainly has its official status. In case of any uncertainty regarding the legislative intent in future, say, five or 10 years from now, records of speeches made by Members and government officials could be referred to for understanding the legislation intent. However, in this case, we

have yet to put the Bill to vote for its Third Reading, if the Secretary has any new measure or idea, he should withdraw the notice for resumption of the Second Reading debate.

In fact, the Legislative Council should also bear responsibility in this matter. When the Bills Committee learnt about the action intended to be taken by the Government, the Chairman should take the initiative to convene a special meeting to hear the explanation provided by the Government. Yet, in the present case, a special meeting was only held after a written request was made by a member. We cannot assume that a meeting has been convened when individual Legislative Council Members, who also serve as Executive Council Members, talk to reporters after they have reached an agreement with the Secretary. That is something we cannot accept.

Deputy President, if this adjournment motion is passed, the Council will not proceed with the debate today. In fact, the Administration should make good use of the next couple of weeks to expeditiously introduce the amendments formally into the Council. I will not talk about my stance on the specific amendment proposal for the time being, for disregarding our support or otherwise, the Administration should in fact agree with our adjournment motion, and make use of the next couple of weeks to propose some formal amendments, instead of adopting this dubious means to use an oral undertaking to amend the text of a provision which had been scrutinized by Members for over one year. Actually, it would be better if the Government, but not the Member, to move an adjournment motion, but there is no other alternative. As far as I know, Mr Kenneth LEUNG and other Members kept discussing with the Secretary yesterday, but the Government was unwilling to concede. Hence, may I appeal to all Members, regardless of whether you would ultimately support or oppose this Bill, please support this adjournment motion on the ground of safeguarding a proper or appropriate legislative procedure.

Separately, I would like to respond to some statements made by the Secretary just now. He said that if the debate was adjourned today, the Bill would be bogged down and become void. In fact, the Government can present the Bill to the Legislative Council again on 19 March by giving notice five days in advance. In the interim, sufficient time is available for the Government to formally — the emphasis is on "formally" because the current approach is nothing but unorthodox — propose various necessary amendments in a proper

manner. Hence, the Bill will not be bogged down and become void because we are only asking the Administration to go by the book.

In fact, while we support the initiative to cool off the property market or stabilize property prices, it must be done properly; otherwise, if more damage is done to the rule of law in Hong Kong or additional problems are created in the process, it would be a serious error in governance. The Secretary also said that he did not expect such a huge repercussion to his well-intended response, and he even used the expression "a spring breeze rippling the surface of the pond" to depict the situation. Of course, we are indignant because the expression which comes after "A spring breeze rippling the surface of the pond" is "What has it got to do with you!". Of course, this matter has everything to do with us because we are the legislature, and if we say nothing, who will speak out?

Perhaps the Secretary would say that he did not intend to make the remark "What has it got to do with you!", and he was just referring to the natural phenomenon of "a spring breeze rippling the surface of the pond". I am sorry, Secretary, there is nothing natural about the "double curbs" measures, which are critically urgent measures adopted under a distorted property market. He should not liken such measures to the natural phenomenon of seasonal changes, and hence, he could set this as a precedent for frequent application in future. I am sorry, Secretary, please take back your flippant remark: "a spring breeze rippling the surface of the pond" because the making of laws is a serious and strict task, and we should perform our role with self-respect. If the Secretary has no self-respect, we are here to caution him. Moreover, I ask him not to lure any attending Members into neglecting their duties. In fact, not much is left of Hong Kong's competitive advantages, but the rule of law is one of them, and it is now being eroded. As such, we must guard it precious.

Here, I must condemn the executive authorities and the accountable Secretary for this act undermines our procedures as well as the rule of law. Therefore, I support the motion moved by Mr Kenneth LEUNG to adjourn the debate. I also implore Members to support this motion, regardless of our different stances and regardless of whether we support or oppose the "double curbs" measures.

Thank you, Deputy President.

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

MR JAMES TIEN (in Cantonese): Deputy President, first of all, I would like to declare interests because the subject under discussion is about "curb" measures, which are related to the property market, and I engage in real estate business.

Deputy President, it may appear that my remarks have nothing to do with real estate, the "curb" measures or the Bill. I now speak on the motion to adjourn the debate on the Second Reading, and my focus is the reasons. The Government has proposed to take some actions, but such actions deviate from the procedure of making legislative amendments. The Secretary has just said that he would make a formal undertaking. I am not sure if there is any informal undertaking, but anyway, he said that he would make a formal undertaking, and he emphasized that he would make a formal undertaking in the Legislative Council. Does this mean that a formal undertaking by the Secretary in the Legislative Council carries more weight than an undertaking or an informal undertaking he made outside the Legislative Council?

It suddenly comes to my mind that March is coming and I am going to attend the two sessions held in Beijing. I have been a member of the National Committee of the Chinese People's Political Consultative Conference for a number of years, and I recall that the Central Government reminds us each time that we should support the Chief Executive and the SAR Government's governance according to the law. Nevertheless, the Central Government has never asked us to support governance according to undertakings. How should we understand the undertaking to be made later and support it, so that it is not necessary to enact legislation accordingly?

The Liberal Party has stated our position that we will vote against the entire Bill but we will conversely support all amendments to reduce the duty rates. In principle, we consider the Secretary's oral undertaking desirable. But instead of asking us to support his oral undertaking, he might as well incorporate his undertaking into the legislation; it will then be easier for us to render support.

Originally, the discussion was about the "curb" measures, and the pan-democrats support the measures, but now the discussion involves political issues. When the Government faces the legislature and the public in future, is it no longer necessary for the Legislative Council to amend or enact laws, and we

can simply rely on the undertaking made by the Government? From a positive perspective, Legislative Council Members will have plenty of spare time in future because we will have to attend fewer meetings, or we simply do not have to hold meetings for discussion at all. All that is required is to videotape the undertaking made by the Government, and that is all.

Deputy President, I am not a member of the legal profession, but you and Mr Alan LEONG are members of the legal profession and both of you are barristers. In the case of a lawsuit in court, if the defence or the prosecution suddenly mentions the Government's undertaking when the judge is going to make a ruling, will this undertaking help the judge make an effective ruling? Can the judge simply base on an undertaking rather than the legal provisions to determine which party wins or loses the lawsuit?

At this point, I think of a troublesome issue that happened six months ago, that is the application for free television licence by Hong Kong Television Network Limited (HKTVN). Mr Ricky WONG mentioned at a Panel meeting that a female senior official made an oral undertaking in 2009, implying that he would be issued a licence. If the oral undertaking made by the female senior official was interpreted in today's context, could Mr Ricky WONG sue the Government on behalf of the HKTVN on the basis of the undertaking made by the female senior official at that time? Should the Government grant him a licence?

Of course, that undertaking is slightly different from the one stated by the Secretary earlier. The Secretary indicated that he will make a formal undertaking in the Legislative Council; such undertaking is obviously different from the undertaking mentioned by Mr Ricky WONG, as it might be made behind the scene or during a casual conversation. I am not sure if a commitment made behind the scene or during a casual conversation is admissible in law or in court; or is it that the undertaking is only valid if it is made in the Legislative Council and recorded in Hansard. Therefore, I think this issue has, for no reasons, lead to a political issue.

I mentioned at the Bills Committee meeting held yesterday that the Liberal Party would certainly oppose the Bill, but we did not want to impede the deliberations on the Bill, and we suggested that the Government should consider withdrawing the Bill. A few Members proposed before I spoke that the Government could withdraw the Bill, make suitable amendments and then

re-introduce a bill into the Legislative Council a month or so later. The amended bill will go through the three-reading procedure and be formally passed. The time gap is short, it may just be one or two months, and that is not a problem. I learnt from the tone of the Government, it may not be the tone of the Secretary ... Yesterday, it was the Deputy Secretary, not the Secretary, who attended the meeting. She tried her best to answer the questions asked by a number of Members, telling us that the Government did not intend to take that action. Members were greatly perplexed. If the Government is to govern according to the law, it should incorporate this condition into the legislation. I even proposed yesterday that if time was pressing, could we first resume the Second Reading debate, and then the Government would commit that after the passage of the Stamp Duty (Amendment) Bill 2012, it would introduce the 2014 Bill, incorporating into the legislation the arrangement that downward adjustment of the rates would be subject to negative vetting, while upward adjustment of the rates would be subject to positive vetting? Actually, the amendment is simple; we simply need to convene some meetings and spend two to three months to scrutinize the bill. When the bill is passed, the pan-democratic Members will not query that the Government ignores the relationship between the executive authorities and the legislature or ignores the duties of Legislative Council Members to scrutinize legislation.

(THE PRESIDENT resumed the Chair)

The Government can respond later whether they do not wish to do so or they are unwilling to do so. In other words, is the Government not prepared to amend any laws within these two months for it believes that making an oral undertaking is adequate? Some Members asked in their speeches the validity period of this oral undertaking? Would the Secretary remain in this position until 2017? Today, the Secretary makes an undertaking; if there is a new Chief Executive in the next-term Government or if the incumbent Chief Executive appoints another person to take up the Secretary's position, will the commitment still be valid? The law has clearly provided that if the new Chief Executive or the Secretary wants to make any changes, such changes have to be made through legislative amendment. The law does not apply to the present case. When the Secretary leaves office, the new Secretary may refuse to honour the undertaking of his predecessor. In this case, how is the judge going to make a ruling? Therefore, I think the Government should seriously consider this question. The

Government can either withdraw the Bill now and re-introduce a new bill into the Legislative Council for scrutiny two months later; or it can make a commitment to resume the Second and Third Readings of the Bill now, which I believe will be supported by Members, and then introduce a new bill with all the amendments into the Legislative Council two or three months later. I hope the Government would select one out of these two options. This can at least resolve a controversy of much higher level which has no direct relationship with the current legislation, that is, can the Government rely on making an undertaking in formulating new policies in future?

Finally, I want to say that the Government insists on doing so because it fears that there may be uncertainties. President, I have just declared interests because I am engaged in real estate business. The uncertainties in the market within these 14 months have actually faded out. People expect that the Bill would be passed, therefore, the drop in property prices has been stabilized and the prices will not fall further. ~~But the drop in property prices in the second session later.~~ Thus, the uncertainties no longer exist. Will property prices fall further two months later? I do not think so. Will there be a sharp rise in property prices two months later? I also do not think so. As the Secretary mentioned in his reply, the Treasury has received \$4.3 billion; what should be done? The Government is not in urgent need of money; if the Government urgently needs to spend money, the \$4.3 billion temporarily kept by law firms should speedily be transferred to the Treasury to meet such expenses. Since the Government does not urgently need to spend money, the money can still be temporarily kept by law firms. Will there be any problem? Anyway, the money has already been kept by law firms for 14 months; they only need to keep the money for two more months. Hence, this is not a good reason for the Government's failure to deal with the matter. I think the Government should carefully consider how it is going to handle the matter.

The Liberal Party is of the view that the Government should consider carefully and determine whether it will either take the initiative to postpone the amendment of this Bill by a month or so, or try to push through the Bill getting the support of the pan-democrats. If it intends to push through the Bill, it has to make an undertaking that it will submit an amendment bill later, so as to rationalize the matter and avoid causing another political storm as people may wonder if the Legislative Council will scrutinize undertakings or bills in future.

President, for the reasons given above, the Liberal Party supports Mr Kenneth LEUNG's motion on adjourning the Second Reading debate.

MR RONNY TONG (in Cantonese): President, since the Government's introduction of the Stamp Duty (Amendment) Bill 2012 (the Bill), I have said on a number of occasions that the Civic Party and I absolutely support this Bill. But what happened in the past few days made me think that I cannot support this Bill under the present circumstances.

President, I do not only support this Bill, I also support clause 16 of the Bill. Clause 16 added section 63A to the Stamp Duty Ordinance, which specifies that "The Financial Secretary may, by notice published in the Gazette, amend a percentage specified in the second column of head 1(1AA), (1AAB), (1B) or (1C) in the First Schedule.". President, people may generally fail to understand the meaning of this provision. This provision explicitly specifies that when it is necessary to increase or reduce the duty rates, the SAR Government does not need to introduce a bill afresh, and it just needs to follow the negative vetting procedures and revise the duty rates by means of subsidiary legislation.

President, while I support this approach, I disagree that the positive vetting procedure should be adopted under these circumstances. It is because general taxation serves two functions: to increase the revenues of the Treasury and to monitor social behaviour through taxes. When it is necessary to perform the second function, the community should not discuss in advance the adjustment to the tax rates. President, I agree that detailed discussions are necessary when new taxes are introduced. However, if the adjustment to the tax rates has to be discussed thoroughly before implementation, various unfair situations in society may arise and this may directly run contrary to the intent of increasing the tax rates.

President, do you remember why former Financial Secretary Antony LEUNG had to resign? He jumped the gun in buying a car in order to save several hundred thousand dollars. If we adopt the positive vetting procedures in increasing the stamp duty rates, we will actually allow property developers to jump the gun in selling flats. President, this is very unfair because developers can immediately suspend the sales of flats, but the general public may not have the option. This is not only unfair but also violates the basic legislative intent.

President, I originally supported this Bill and the negative vetting procedure, so as to allow the "curb" measures to effectively regulate the property market. Nevertheless, the Secretary suddenly announced, out of the blue, a U-turn in the past few days. He announced that upward adjustments of the duty rates would be subject to positive vetting and with immediate effect. I believe this approach has committed three sins and I am going to explain one by one.

President, the first sin is the violation of the rule of law as some Honourable colleagues have mentioned. The Government's approach is really strange. On the one hand, it hopes that this Bill, including the negative vetting procedure that I just mentioned, would be passed; yet on the other hand, it declares that it will not abide by the provision and will adopt the positive vetting procedure when it likes. President, I have just asked the Secretary if he should first give up clause 16 of the Bill on the negative vetting procedure if he is going to make the undertaking. It is still excusable if he gives up the clause. However, in the present case, even though there is an explicit provision in the Bill, he has indicated before the passage of the Bill that he will not abide by the provision. He is acting as he pleases. President, does the rule of law still exist? The Government has taken the lead to indicate that it will not act according to the legal provision. This is no trivial matter. Hence, the first sin cannot be pardoned.

President, the second sin is the violation of the Basic Law. Please allow me to read out Article 76 of the Basic Law which provides that "A bill passed by the Legislative Council of the Hong Kong Special Administrative Region may take effect only after it is signed and promulgated by the Chief Executive." The focal point is the phrase "may take effect only after". Generally speaking, all laws will only have legal effects after being passed by the Legislative Council. Imagine what would happen if the bills introduced by the Government will have immediate effect without deliberation. What will happen if Article 23 of the Basic Law will take effect without deliberation by the Legislative Council? This is not allowed, right?

Subsidiary legislation is handled differently. In general, subsidiary legislation is subject to negative vetting unless the legislation is highly controversial. In that case, the Government may, for the sake of fairness, adopt the positive vetting procedure, but the basic principle of Article 76 of the Basic Law should not be contravened.

When we discussed this issue, the Secretary told me that he could adopt the present arrangement and ask law firms to collect the duties first, and actually this can also have immediate effect. President, how can the Secretary make such a remark? If the Government acts according to its preference, and by means of administrative instructions or administrative strategies, or by intimating lawyers or accountants by force and beguiling them with money, indirectly give immediate effect to the legislation prior to the completion of the due procedure, Article 76 of the Basic Law will then only exit in name. In my view, the present approach of the Government is already not very healthy, and if it adopts the same practice every time, and ignores Article 76 of the Basic Law where necessary, and bypasses it through some unorthodox means, so as to give immediate effect to the legislation, does the Basic Law still have dignity? How can the Government take the lead to bypass the Basic Law and, most important of all, bypass our legislative power? President, I believe the second sin is also unpardonable.

President, the third sin is similarly unpardonable. President, at this moment, we are discussing the important relationship between the executive authorities and the legislature, but the Secretary has taken the lead to damage the relationship. He only took two hours to turn down an important provision of the Bill that we had spent 14 months to scrutinize. He even had not reached an agreement with various political parties and groupings in this Council. After discussing with two Executive Council Members, the Secretary considered that it was not necessary for this Council to deliberate on the issue, and it was also not necessary to consult other political parties and groupings. What then is our role in this Council? President, such act of the Secretary has not only seriously undermined the relationship between the executive authorities and the legislature, but also seriously undermined the dignity of the legislature. Even though we had spent 14 months and a lot of efforts on scrutinizing the Bill, the authorities can make amendments at will, and they even do not bother to submit a CSA. President, a word from the Secretary is all that we have; it is really most amazing, even Emperor Qin Shi Huang was not as powerful.

President, if I have to make a comparison, I certainly think that it is important to regulate the property market, I still think so at this very moment, but if I have to make a comparison, regulating the property market is just necessary for a short period of time, and given our economic environment, it might not even be necessary to adopt the regulatory measure. If Chief Executive LEUNG Chun-ying is telling the truth but not lying, the problems related to the property market may really be solved. He said that 47 000 or 100 000 units would soon

be constructed and, following the "blind scramble for land", a lot of land has now been available for housing development, and the problems might have been solved. Hence, the Bill only meets a temporary demand. Nevertheless, as I have said just now, the rule of law, the spirit of the Basic Law, the relationship between the executive authorities and the legislature, as well as the dignity of the legislature are our basic and permanent core values. We cannot cast these values aside just for a moment's convenience. We cannot discuss these values when we can and when we like to do so. What sort of world are we living in? What is the point of being Legislative Council Members? President, this is a matter of principle, it is not simply a matter of whether we can revive the property market. It is important to revive the property market, but the rule of law, the spirit of the Basic Law, and the dignity of the legislature are even more important because their values are priceless.

President may have noticed that I have not said a word on whether the undertaking is valid, because its validity is not a factor for consideration. I do not care if it is valid or not. So long as an undertaking is made, the three most important core values mentioned by me just now have been undermined. If the undertaking is invalid, it would be desirable, for if the Secretary, after taking drivel, assumes that nothing has happened, the damage might not be so great. If the undertaking is valid, even if it is valid for this term of Government, the damage done is endless. Therefore, I am surprised that some Honourable colleagues have focused on whether the undertaking is valid; if it is valid, they will vote for it, if it is invalid, they will vote against it. President, they have totally ignored the most important issue, that is, the principles and core values that we are concerned about.

President, when the Bills Committee had a meeting yesterday, I very much hoped that the SAR Government could give up before it was too late. I hoped that it would understand the crux of the issue and the fundamental reasons, such that it would defer the debate on the Bill, formulate afresh the amendments and act according to the legislative proceedings, to see if Members would endorse the bill. As long as the Secretary refuses to withdraw this undertaking, no matter it is valid or not, I cannot continue to support the Bill. If I have expressed support, the authorities would have the opportunities to undermine the spirit of the rule of law, the spirit of the Basic Law, the relationship between the executive authorities and the legislature, as well as the dignity of the legislature. I should not give the authorities such opportunities. If the Bill is not passed, the sky will not fall and the authorities can re-introduce another bill. It can also play the same old trick

such that the bill will have immediate effect as the Legislative Council and I could in no way stop it. At the very least, I will spare no effort to obstruct the authorities from undermining the most important core values that I have just mentioned.

President, unless the Secretary publicly states that he will withdraw the undertaking or he will not make such undertaking, I am sorry that I cannot support the Bill. I also cannot support the Second Reading or Third Reading of the Bill. Thank you, President.

MR ALAN LEONG (in Cantonese): President, before I speak on the motion moved by Mr Kenneth LEUNG, I have to clarify our stance once again. The Civic Party supports the implementation of "extraordinary measures introduced under exceptional circumstances" and the "double curbs" measures. I wonder what Secretary Prof Anthony CHEUNG would feel after hearing Mr Ronny TONG's speech. Mr Ronny TONG initially supported the proposed section 63A, but owing to the recent development, he now opposes the "double curbs" measures proposed by the Government. President, I do have a thought to share. Considering the matter from the angle of political trickery, I am increasingly suspicious that LEUNG Chun-ying has actually "knelt down" before property developers. He is only trying to get somebody to get rid of the Bill. By creating a situation of disrespecting the legislature and disregarding the rule of law, he has anticipated that Members, who are staunch supporters of the rule of law and the dignity of the legislature, would oppose the Bill. In that case, he does not have to take any action himself. President, do you think that is the case? I myself will certainly not rule out this possibility.

President, I often hear people talk about "doing a disservice out of good intention", but actually, "doing a service out of bad intention" is equally objectionable. As Mr Ronny TONG has given a very vivid description about "doing a service out of bad intention", I will not waste time on that point. After the implementation of the "double curbs" measures, property prices will not be pushed up so rampantly by non-locals, and Hong Kong people who cannot afford to buy a flat before may be able to do so. This is certainly doing a service to them. However, if the Government has the evil intention of disregarding the rule of law and challenging the powers of the Legislative Council, it will cause more harm than good even if it has done something good. Therefore, I hope LEUNG Chun-ying will withdraw that perfect plan of his. I would also make it

clear to the people of Hong Kong, it is LEUNG Chun-ying who impedes you from home acquisition; not Members who will vote against the Bill today, because LEUNG Chun-ying has forced Members to cast opposing votes.

President, what I said is not purely based on a conspiracy theory. As you are fully aware, if the Government suddenly realized at the final stage, say four days ago, that there was a big problem with the proposed section 63A ... Of course, the Government might find that they did not have enough votes, and was thus forced to take such action. Hence, let me remind some Members. If they intend to accept the so-called oral undertaking of the Secretary as a fig leaf to accept the proposed section 63A in its original form, that plan will not work either. The reason is that the trick will be completely revealed in front of a demon detector.

President, why do I say so? There are actually a few feasible options for the Government and the executive authorities. First, they can apply to the President for an exemption and immediately table the rewritten proposed section 63A to this Council today. In fact, I have rewritten it for them and it is an easy task. All we have to do is to add a proviso after the original version, which reads, "This section does not apply if the amendment will effect a substantial increase of the rates currently in force.". The meaning will be very clear. Nonetheless, the Government had not chosen this option. President, is there something fishy? There must be.

Another option for the Government is to demonstrate the modesty of a broad-minded Government by withdrawing the Bill. No problems will arise if the Bill will not be read the Second and Third time today. Anyway, the Bill has been scrutinized for one and a half year, and according to the Chief Executive, the Financial Secretary and the Secretary, the measures have started to take effect because property prices have stopped shooting up. President, what is the big deal of waiting for another month? I have looked at the meeting schedule of this Council. We shall have our next meeting on 19 March which is about a month later. If it cannot be done on 19 March, 26 March is another option. There will be two Council meetings before the possible filibustering on the passage of the Budget. However, the Government has not chosen this second option. That is queer and definitely fishy. Therefore, it is indeed right for me to say that LEUNG Chun-ying has "knelt down" before property developers and he is trying to get somebody else to get rid of the Bill.

In addition, there is a third option, and what is it? It is the option just proposed by our respectable colleague Mr James TIEN, leader of the Liberal Party. The Government will make an undertaking today, not a vague undertaking, but an undertaking that within three months after the passage of the Bill today, the Government will introduce into Legislative Council a bill to amend section 63A. The Secretary can adopt the wording of the amendment which I have suggested. Even if he does not, it will not be very complicated to draft such an amendment. If Secretary Rimsky YUEN likes to show his abilities, let him do so. Anyway, so long as the Government promises to amend the provision within three months, there are different ways to do so. Although all three options mentioned are feasible, the Secretary has not adopted any of them. What are the reasons for that? Perhaps the Secretary only intends to make empty promises, and wash his hands of it once the mission is accomplished. He provides a fig leaf for some Members, and couldn't care less after the passage of the Bill. "Once on shore, pray no more." We can do nothing about the situation.

President, I have a tender heart for the Deputy Secretary who attended the meeting yesterday. (*Laughter and comments from Members*) Even if the Secretary, a politically accountable official, had chosen not to attend the meeting, the Under Secretary should at least take his place. Perhaps the Secretary has been very busy these days and he has a lot of business to handle, for example, the proposal of "toll increase at the Cross Harbour Tunnel and toll reduction at the Eastern Harbour Crossing" which has yet to be implemented. But where is Under Secretary Mr YAU Shing-mu? These two politically accountable officials should have attended the meeting of the Bills Committee to be grilled by members but they were absent. This is a kind of political undertaking. Instead, an Administrative Officer, who needs not undertake political responsibility, has been sent to take the flak and the blame. Such practice should be condemned. President, taking all the circumstances into consideration, you cannot blame me for thinking that LEUNG Chun-ying was actually prepared to succumb, but he dared not do so, and hence thought of this ploy. President, the closer we look, the closer to the truth it gets.

President, Secretary Prof Anthony CHEUNG said that his proposal would not weaken the power of the Legislative Council to scrutinize bills and perform the gate-keeping role for the public. Did he really believe in what he said? Did he know what he was saying? President, as you are well aware, if a bill is to go through the three-reading procedure, the Government must at least have 36

supporting votes. However, if negative vetting procedure is adopted, Members have to move a motion to amend the legislation that has already be enacted and in force. Under the separate voting system, the Secretary only needs to secure the support of 18 Members returned from the functional constituencies (as is often the case) to vote against the Member's motion. In other words, in the former case, the Secretary needs 36 votes of support but in the latter, he only needs the support of 18 Members. How can he say that the power of the Council to scrutinize bills has not been weakened, I really want to hear the logic of Secretary Prof Anthony CHEUNG. However, I do not think I will hear it because there is not much logic in the Secretary's reasoning. Why do I say so?

President, you can actually take a simplistic point of view. Mr WONG Yuk-man said that I should not have a tender heart for the Deputy Secretary, but yesterday, she did make tremendous efforts to explain the stance of the Government. Since the stance of the Government was not based on logic, the Deputy Secretary seemed illogical. Why do I say so? Secretary Prof Anthony CHEUNG has repeatedly said that positive vetting will be adopted for upward adjustment of the rates while negative vetting will be adopted for downward adjustment. But then he has also reiterated that market sensitive and time critical factors have to be considered. If so, why is it that positive vetting is to be adopted for upward adjustment of the rates when property prices continue to soar? Are his remarks conflicting? They simply go against logic. The Government is now asking us to do something which will not be effective. I do not understand why the Government is only concerned with expediency. Very often, more haste results in less speed. President, the biggest problem is, if problems should arise in future because the Bill has not been examined thoroughly, the Secretary does not have to take the blame. Instead, this Council will be blamed for passing the Bill. Therefore, I urge Honourable Members to consider carefully that we might be blamed in future. If the Bill is criticized as illogical and unreasonable after its enactment, it is we but not Secretary Prof Anthony CHEUNG who will have to shoulder the responsibility. That is really absurd.

President, why does the Government act in such an absurd manner? Originally, Mr Martin LIAO has put forward a win-win proposal, the Government did not accept it. Mr LIAO's CSA has addressed my concern by introducing a mechanism under the Public Revenue Protection Ordinance (Cap. 120) which gives the Government six months to obtain the support of this Council. If it fails to do so, any excessive tax paid will be refunded to

taxpayers, just like in the cases of the motor vehicle first registration tax and the tobacco duty. I think that is a very good arrangement and on this point, my view differs from that of Mr Ronny TONG. He opines that the proposed section 63A as drafted already contains that meaning. He is a keen supporter of the provision. However, my view differs. Obviously, as the Government said it would adopt "extraordinary measures introduced under exceptional circumstances", it means the arrangements will involve changing the behaviour of the public. If so, are the arrangements of the stamp duties any different from those of the tobacco duty and the motor vehicle first registration tax? If they are not, it will only be fair to introduce a mechanism under the Public Revenue Protection Ordinance.

However, it makes no difference whether I have any reservations about the proposed section 63A or whether Mr Ronny TONG is a keen supporter of it. We have to oppose the Bill all the same because the Government has shown disrespect to the legislative process and the rule of law.

I so submit.

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

DR LAM TAI-FAI (in Cantonese): President, being an accountability official is not easy at all. One has to be the cream of the crop with outstanding abilities because many members of the public regard accountability officials as role models and follow their examples. President, I notice that you are scratching your ear. Does that mean you disagree with me or cannot hear me clearly? An accountability official has to be careful and cautious in every step he takes, and he has to be cautious and mature in every word he says; he cannot act willfully and recklessly.

This incident has fully revealed and reflected that some officials — dare not say the Government for there are many officials in the Government — are disorientated, they do not follow the rules and act in a disorderly manner. I am totally bewildered. I will describe them with five words. They are disoriented, reckless, ridiculous, supercilious and overbearing.

President, if officials act in a disorderly manner without following the rules and regulation in formulating, introducing and implementing a policy, can the

policy be a success? Will it be well supported? Can it be implemented? Will it be acceptable by the public? The chances are slim.

As a matter of fact, the practice and act of Secretary Prof Anthony CHEUNG in this incident has set a very bad example. Just now, I heard some Members from the pan-democratic camp, including Mr James TO and Ms Cyd HO, repeatedly quote what I said in the urgent special meeting held yesterday. Does it mean that they admire me? Well, I do not need their admiration; I was only making an honest remark and giving a piece of sincere advice. It is just that I dare say what others dare not say. However, people who speak boldly and honestly may not necessarily come to an good end, and so do people who admire me.

Mr Alan LEONG pointed out just now that this incident happened because "CY", our Chief Executive, has "knelt down" before property developers. I totally disagree with him. This incident definitely has nothing to do with Chief Executive LEUNG Chun-ying, because I know clearly that Secretary Prof Anthony CHEUNG is the initiator of the whole incident. Being overwhelmed by success, Secretary Prof Anthony CHEUNG thought that he would win great merit in introducing the "double curbs" measures, and thus he has acted recklessly and hastily. Many Members of this Council do not agree to what he has done.

Mr Martin LIAO is not a member of the Bills Committee, but he has submitted a Committee stage amendment (CSA) just before the deadline and people have different views about this. Mr Kenneth LEUNG moved that the debate be adjourned today and I would not give my views for the moment. However, after the Bills Committee had completed its work after prolonged discussions and exchange of views extending for more than a year, two Members of the Executive Council, Mr Jeffrey LAM and Ms Starry LEE, suddenly came forward, saying that as they were very concerned about the relationship between the executive authorities and the legislature, they had, through various channels, relayed the views of some members of the Bills Committee to the Government. Hence, a proposal has been put forward which has flared up a huge public uproar. One of the two Members is the Chairman of the Bills Committee. Perhaps it is not good enough to have one Member putting forward the proposal, so we have two of them as an indication of strength. We were indeed dumbfounded by the sudden development of events.

I believe the two Members have hoped to defend the Government and are eager to see the smooth passage of the Bill. However, I must say that the incident has now made the Government a laughing stock. The Legal Adviser stressed repeatedly yesterday that an oral undertaking did not carry any legal effect. As Secretary Prof Anthony CHEUNG also told us that there was no guarantee that the Government of the next term would make the same undertaking, the Government's proposal will create harmful effects and risks once the Bill is passed. In other words, the next-term Government can capriciously change the policy and its contents. Therefore, the initiative taken by Ms Starry LEE and Mr Jeffrey LAM not only fails to defend the Government, but also backfires and does a disservice. Anthony CHEUNG seems to think that he has made a smart move, but I dare say that this is an example of "clever people falling victim to his own cleverness".

Secretary and President, many Members have asked in this meeting whether an oral undertaking carries any legal effect and whether it is enforceable in future.

Let me tell you a story now. There was a young couple who fell in deep love out of free will, and they made solemn commitments that they would love each other for the rest of their lives. However, if the groom did not intend to sign a marriage certificate, would the bride rest assured? Would the parents of the bride rest assured? If the groom became disloyal and reneged on his promise, would the bride have any protection at all? The Secretary has indeed said that we have records of proceedings. Similarly, for the young couple, they got married but without registering their marriage; there were video recordings of the wedding banquet and marriage pictures were taken, but can these photographs be produced to prove the validity of their marriage? They had made solemn commitments too. I think the Secretary should think twice, as he cannot always remain in the same position forever and the term of this Government will not last forever. A new generation will surely replace the old.

As Ms Starry LEE is now in the Chamber, I would point out that the Bills Committee had held discussion for more than a year and had considered different options, including exemptions for charitable institutions or the age threshold of 18. I do not understand why the two Members did not submit CSAs before the deadline, but instead discussed privately with the Government on an oral undertaking. Such act is tantamount to placing bets with an illegal bookmaker. There is a proper off-course betting centre for people to place bets and betting

tickets will be provided as proofs. However, these two Members do not place bets in well-proven establishments, but have instead placed bets with an illegal bookmaker on the excuse that time is running out. Placing bets with illegal bookmakers is risky in that they can refuse to pay when you win because your bets are placed orally. Why do we have to legalize illegal bookmaking? Why not place the bet in an off-course betting centre? Why can they not do their business in a proper place? Why are they trying to make illegal deals legal? I cannot understand, I really cannot. I am not penalizing anyone here. I just feel that people have acted in an disorientated, disorderly manner without following the rules.

Today, I hope the Secretary will not be too concerned with expediency. February and March is only one month apart and as the saying goes, "More haste, less speed". Will the Secretary take on board the views given by Members, follow good advice, right the wrong, mend one's way and postpone the Second Reading of the Bill? Can we hold further discussion, or even hold a few more meetings of the Bills Committee to discuss afresh the views of the two Members who want to improve this policy, so as to seek a consensus, narrow the differences, and then reintroduce the bill at the next Council meeting held in March? Does the Secretary really intend to be so obstinate and overbearing in handling this incident? Will there be any turbulent changes in the property sector in the coming month that propels him to act hastily? Or is he anticipating any increase of interest rates in the external economies or the onset of a financial tsunami which urges him to finish his business today? I do not believe those are his reasons, but that he is obstinate. However, the credibility of the Government is not a real concern, the most important thing is to handle the matter properly.

Therefore, regarding the Secretary's words to Mr Kenneth LEUNG that "I regret that you have moved to adjourn the debate", I also express deep regret that the Secretary is obstinate, that he pays no regard to regulation, law and order as well as procedure.

President, finally, I hope that the Government will listen to good advice readily and act according to the rules and the procedures after listening to the views of Members.

President, I so submit.

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

MR WONG YUK-MAN (in Cantonese): President, how absurd! The so-called oral undertaking given by the Government is no more than empty talk, or in vulgar term, "crap". Many Members have already expressed their doubts about the oral undertaking given by the Secretary before I speak. With such a low popularity, this Government even dares to talk about oral undertaking; for a Government without the mandate of the public, how can it talk about oral undertaking. Take a look in the mirror. The Government is not elected by us. If it is a democratic government elected by the people of Hong Kong, we will naturally believe that it will bear political responsibility for any oral undertaking made. If it fails, it will lose in the next election. That is simple enough. As Yingluck SHINAWATRA, the pretty lady Prime Minister of Thailand, failed to fulfil an oral undertaking made to farmers, disastrous results followed. Mind you, the Government of Thailand is elected by the people, so how can our Government talk about oral undertaking! Secretary, being a learned man and a professor at one time, do you know what an oral undertaking is?

In fact, what happened today is an excellent illustration of the parliamentary politics in Hong Kong, which is basically a mess. On this point, I have to repeat what I said during the filibuster two years ago. Back then, I gave you a lesson in this Council on the meaning of a representative political system and whom the political representatives represent, and so on. The filibuster had given me ample time to speak and my explanation was thorough, but people did not listen. Yet, records are kept in the Legislative Council Library and by this Council. Who do the legislators represent? As we are aware and as I have said more than 90 times, this legislature is basically a mess. The incident today aptly reflects the various alliances and political tussles in parliamentary politics. It is the best illustration.

There are things which are beyond our imagination. Of course, there are things which we have got used to. For example, Mr Ronny TONG of the Civic Party often deviates from the party line and rules. He is rather independent and often acts of his own accord. His political party accepts his way and we are also accustomed to it. Therefore, when Mr Alan LEONG said that Mr Ronny TONG ... actually he was trying to say that Mr TONG has repented. Mr Ronny TONG changed from being a keen supporter to repenting his act. This reflects that there are tussles even within the same political party. Mr Jeffrey LAM and

Mr Abraham SHEK speak totally different things which have hardly anything in common, which is indeed funny. Maybe the reason is that Mr Jeffrey LAM is a Member of the Executive Council. There are also tussles within the Business and Professionals Alliance for Hong Kong (BPA) and the problem remains unresolved.

However, the Communist Party is remarkable. For example, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) ... President, you are also a member of the Communist Party, are you not? The DAB is really remarkable, its members follow the rules and they are disciplined. Ms Starry LEE, Vice Chairman of the DAB, also serves as a Member of the Executive Council. After she has reached a consensus with Anthony CHEUNG, her political party will surely follow her line, is that right? These people follow the rules. The BPA, on the other hand, is baffling. Do you agree, Mr Abraham SHEK? Although Mr Jeffrey LAM promises to support the proposal, Mr Abraham SHEK opposes it. This indicates that there are tussles within the pro-establishment camp and within the same political party. It is just so funny.

President, at present, the conflicts in this Council is not limited to the conflicts between the opposition camp and the Government, or the conflicts between the opposition and the pro-establishment camps. There is infighting even within the pro-establishment camp. Mr James TIEN spoke with the force of justice. Being a property developer himself, he was so noble and righteous in saying that "This is the Mainland culture". I find it weird that such words come from Mr James TIEN who said, "Oral undertakings are part of Mainland culture, and they should not be introduced into Hong Kong". The saying "Our words count" (in Putonghua), means that we live up to our words. But the meaning in Putonghua is different from that in Cantonese. President, the saying that we "說了就算" means "We give you our word" in Putonghua, but it means something different in Cantonese. President, the remark that we, the Communist Party "說話算話的" (in Putonghua) means that we, the Communist Party, will honour what we have said, but in Cantonese, the meaning will become "I have said so and that is it", meaning that no actions will be taken. Hence, there is a difference. President, since we are delivering our speeches in Cantonese and not in Putonghua, the remark of "說了就算" should be interpreted in the Cantonese sense.

Let me return to the earlier topic. People who watch the television broadcasting are really often bored to tears. Unless it is "Yuk-man" who is delivering the speech, they will switch to another channel. Of course, Dr LAM Tai-fai is also an eloquent speaker. This debate today or the marathon debate to follow will be the best illustration. Of course, everything depends on whether or not this motion will be passed, if it will, we can call it a day. If members of the public are concerned about parliamentary politics or want to understand parliamentary politics and what the Members are doing, this incident will provide the best illustration and teaching material.

This legislature is a mess, but what Anthony CHEUNG did has made us suddenly joined forces in monitoring the Government. That is a surprising outcome. Apart from the staunch royalists of the DAB, other Members, including the opposition camp and the pro-establishment camp have come together to monitor the Government. We think that "empty talk" is unreliable and risky. Although we attach much importance to the law, the Government has surprisingly given us an oral undertaking. I notice that Mr Abraham SHEK often gives good remarks. He made a good point in saying that there were "three nos", that is, "no procedures, no justifications and no concepts". He also said that the Government had completely ignored the Bills Committee. I do not think that is entirely true. Since the Chairman of the Bills Committee had some private dealings with the Secretary, how would the Secretary have ignored the Bills Committee? However, can the Chairman of the Bills Committee represent the entire Bills Committee? That Chairman is very lucky in the sense I am not a member of the Bills Committee; if I were, I would have reprimanded her severely. But Mr Ronny TONG and Dr LAM Tai-fai have been very polite to her. In what capacity can she represent us? In what capacity can she represent us to say such things to Anthony CHEUNG? Sometimes, the wicked loses out too. Originally, in resuming the Second Reading of the Stamp Duty Bill on the "curbs" measures, there should be enough votes for its passage. However, something unexpected happened, and Mr Ronny TONG is a very good example, is that right? He changes his stance and makes a U-turn suddenly, perhaps because ... has he been affected by Ms Starry LEE or Mr Jeffrey LAM, or has he intended to do so long ago, but let them speak it out for him? Or is the whole thing a conspiracy as advocated by Mr Alan LEONG, who suspects that LEUNG Chun-ying has "knelt down" before property developers? I do not know what the reason is, but why does Ronny TONG make a U-turn suddenly? The matter can actually be dealt with in a very simple way. As there are so many CSAs, let

Members discuss and vote on them. Why did he stir up so many troubles in saying that the deadline for proposing CSAs has passed? That is not a reason at all.

As we all know, that is not a reason. The Secretary hopes to push through the legislation speedily, is it possible to do so? Such an attempt failed in the end. Mr Kenneth LEUNG moved a motion at the meeting of the Bills Committee to adjourn the debate. That motion was passed at the meeting, but as it was not legally binding, he has to move the motion again in this Council. Should the motion be passed in this Council, we could go home and sleep, right? The Government gets enmeshed in a web of its own making. Secretary, I cannot imagine an intelligent man like you, who had taught in university for many years, who had been the President of the Hong Kong Institute of Education for years, and who was a former member of the pan-democratic camp, has turned into such a state.

Secretary Prof Anthony CHEUNG, you are now being attacked on many fronts, and to use the words of Mr Alan LEONG, I have "a tender heart" for you. Just now, Mr Alan LEONG said that he had a tender heart for Deputy Secretary Miss Agnes WONG. I object to the use of such words by Mr LEONG because this is a kind of sexual discrimination. Miss WONG is a technocrat and a single lady, and he said he has a tender heart for her. That is a wrong choice of words. He should say that he has sympathy and not a tender heart for her. When seeing so many people attacking the Secretary, I initially had a tender heart for him and sympathized him; but on second thought, I found no reason to sympathize him, for he is wasting my time. He made me speak for more than 10 minutes for no reason at all. Furthermore, this is going to be a marathon debate. He has to sit here for a long time and the debate can go on for a few consecutive days. Does he understand? The President and the Deputy President of this Council have to take turns to chair the meeting. Everyone has worked very hard. Every staff member of the Legislative Council Secretariat has worked very hard. They have to make telephone calls early in the morning to liaise and make meeting arrangements. As Mr Kenneth LEUNG has moved the motion suddenly, we have to spend a few more hours.

President, I support Mr Kenneth LEUNG and hope that his motion will be passed, so that the Government has to withdraw the Bill and table it later. As the saying goes, "We should understand that the past is beyond recall, but the future is still within our grasp". Anthony CHEUNG, you have to think

carefully. Look how smart and awesome you look, why are you caught in such a terrible situation? More than 90 people, including those in the pro-establishment camp and the opposition camp, have joined forces against you. What is the point of being an official in such a state? It would be better for you to return to the university and teach, then you would not be reprimanded. You have rarely been reprimanded, haven't you?

Where do the problems lie? First, there is a problem of political ethics. Do you know that political ethics has been violated now? Things are in a mess. Actually, if people follow the rules and the procedures, all will be well. Let us decide by counting the votes. According to past practice, the Government can lobby Members for support; this is your established practice. Try to convince Mr Abraham SHEK then, he is a hard nut to crack, he is bullheaded and unyielding. Try to convince him first. Do you not know how to do these things? Political strategies and public relations tactics have to be employed. Otherwise, what is the point of employing a scoundrel like Andrew FUNG? Ask him to appease Mr Abraham SHEK. To put it simply, you are not following the correct path and you have broken the rules. Upon hearing the words oral undertaking, I was infuriated, and many Members who spoke before me also expressed their anger. Yesterday, when I was watching the news on the television upstairs, I was infuriated. What do you mean by an oral undertaking? You people even said that the oral undertaking would certainly be fulfilled, otherwise, the Legislative Council would overthrow this and that. What are you saying, Buddy? Will you be Secretary forever? It is still uncertain whether the current-term Government can complete its term of service. Who knows? On the other hand, we Members can definitely serve until 2016 unless we resign to trigger a referendum. Therefore, the first problem is that you have violated political ethics.

Furthermore, officials including Chief Secretary Mrs Carrie LAM often speak of the relationship between the executive authorities and the legislature, but that relationship has been ruined totally by you people. What more can you say? You have no respect for the Legislative Council and you insult it. This legislature is already a mess, Buddy, but you are even trying to take away our dignity which is all that is left. How dare you say that an oral undertaking has legal effect! On what ground can you say that? President, ask the Legal Adviser of the Legislative Council Secretariat whether such an oral undertaking has legal effect. You do not intend to live up to your words, right? You can do whatever you like once you get what you want. Such practice will arouse

widespread indignation. Therefore, I advise Secretary Prof Anthony CHEUNG to listen to us and withdraw the Bill. Besides, I can tell the Secretary that even if the motion to adjourn the debate is negated, he will have a hard time in the next few days. Let me tell him, things that cannot be done should not be done, does he think he can get away with it? Does he think that by settling with the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), which is his alliance and LEUNG Chun-ying's, things will run smoothly? Of course, the DAB is indispensable in some cases, but sometimes even with the DAB's support, things may still not work, is that right? It really depends on the circumstances. Can the Government act autocratically with the support of the DAB? Having said that, without the support of the DAB, the proposal for constructing the new Broadcasting House for Radio Television Hong Kong was rejected. Is that the case? The DAB has certainly made a difference in that case.

This incident is different, is it not? The Secretary has to reconcile with people like Mr James TIEN and Mr Abraham SHEK. Mr SHEK is really a headache. Besides, the Secretary would also like to know what Mr Jeffrey LAM wants, right? Therefore, I think the public should be concerned about this incident, even though many do not understand what BSD is and why there are so many CSAs. The CSAs are baffling and people do not know what they are all about.

However, the Government is indeed insulting the legislature. In this incident, the Government ... Perhaps some will think that this is a benevolent policy, and if you ask me if the property market should be suppressed, I am all for it because property prices have risen to a height which are beyond the affordability of many people. On this underlying principle and considering the matter comprehensively, we will not object to the introduction of any demand-management measures by the Government. However, such measures must be based on public views and in the interests of the majority. That is the correct approach. In addition, a balance has to be struck among the interests of various sectors and the adverse consequences have to be taken into account. However, the Secretary has not considered these factors, he is only doing what is convenient for him. The Bills Committee had discussed for more than a year and the Secretary had heard many views when he attended the meetings, why then did he make a sudden change at the last moment and propose to make an oral undertaking to stall off the problem or to solve the problem? Such an approach

is by no means desirable. Let me tell him, he should not make the mistake ever again. If he would listen to us and withdraw the Bill, we will let bygones be bygones. If he does it again, he will see what we will do. This Government has no credibility at all, what makes it think that it can draw on the practice of others and make oral undertaking? Who will believe in it? Does the Government think that the remark of "說了算" can be interpreted in Putonghua, that is, "We give you our word" according to the Chinese Communist Party? The remark of "說了算" in Cantonese means one does not intend to do what has been said. Remember, the meaning of the remark is different in Cantonese and Putonghua. We think the Secretary's remark should be interpreted in Cantonese. We will not believe in the so-called oral undertaking made by an official of a governing team which lacks credibility. We only believe in acting in accordance with the law. That is all.

MR DENNIS KWOK (in Cantonese): President, what we are handling the legislative work which is very solemn. The legislative power is one of the three powers under the system of separation of powers, and it is also the most important function of the Legislative Council.

It is stipulated in Article 73 of the Basic Law that "The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions: (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;". A piece of proper legislation should consist of several elements, including a good policy intent; legal provisions which can achieve the policy intent; the proportionality and feasibility of the legal provisions; as well as a very stringent legal procedure for the scrutiny of the legal provisions. Of course, as regards what is meant by "a legislation with a good policy intent", "the legal provisions can achieve the policy intent", as well as "the legal provisions with proportionality and feasibility", it is a matter of opinion and there is no standard criteria.

However, there is a consistent standard for the legislative procedure, which should be stringent, objective and to be complied with by everyone, including the Government. As in the case of the Rules of Procedures of this Council, every Member and government official must abide by the legislative procedure. Therefore, it does not matter if the legal provisions are good or not, when this Council is undergoing the legislative procedure, the most basic requirement is

that the procedural requirements must be met. If the legislative procedure is in breach of procedural justice, the legislation enacted will be of inferior quality and in violation of procedural justice, disregarding how well-intentioned the legislation is.

President, we all agree that the Bill we are now handling can achieve certain effects, and we therefore support its policy intent. However, during the legislative process, we notice that the Government's handling is very poor, and has completely ignored procedural justice. As some other Members have just indicated, the most obvious mistake of the Government is to make an oral undertaking that the future increase of the tax rates of the two stamp duties will be made by way of a Blue Bill, which is a common practice.

President, we are now handling legislative work but not asking somebody out for dinner or tea. The law must be observed by everyone, including the Government. The Government tries to bypass or circumvent legal restrictions by means of an oral undertaking, which violates the rule of law. Also, the legal advisor of the Bills Committee has indicated that if in future, the Government violates the oral undertaking it makes today, it will not be sanctioned by law. Can this practice of the Government be considered as respecting the rule of law? Is this practice in line with procedural justice? Is this practice showing respect for the legislative procedures of the Legislative Council?

President, as we all know, many oral undertakings made by the Government have not been honoured. Chief Executive Mr LEUNG Chun-ying once indicated that things was not said did not mean nothing would be done, then does not mean that things said will be done? As the current Government has such low popularity rating and poor credibility, how does it expect that people would believe and accept its oral undertaking? I believe I need not give any examples, the answer is clear to all.

Therefore, if the Government genuinely wants to undertake to get something done, the only way is to go through the established legislative procedure in accordance with the principal of procedural justice. It should unambiguously state in law its various undertakings, and different legal provisions should also be clearly stated and set out in the legislative process.

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

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

IR DR LO WAI-KWOK (in Cantonese): President, first of all, I have to declare that I have properties, and I hold properties in the name of companies as well.

President, although I am not a member of the Bills Committee on Stamp Duty (Amendment) Bill 2012, being a member of the Panel on Housing, I have participated in discussing the relevant demand-side management measures taken by the Government to address the overheated property market. As a Member of this Council and also a member of the public, I am of course very concerned about the so-called "curbs" measures. However, I consider that no matter what demand-side management measures the Government adopts to curb market exuberance, we must give due consideration to legality, reasonableness and compassion, strike a balance and make choices. Of course, this Council should also pay attention to legality, reasonableness and compassion when handling bills, including this Bill on "curb" measures or any other bills.

President, owing to internal and external factors, the local property market has been exuberant in recent years. Internally, there has been an imbalance between demand and supply in the property market due to the SAR Government's inadequate efforts in respect of land development over the years. Externally, exceptionally low interest rate and shortage of capital outlets caused by weak external economic performance, particularly after the global financial tsunami, have resulted in an influx of overseas capital into Hong Kong, stimulating the local property market and fuelling property speculation. Property prices are gradually pushed to a higher level moving away from economic fundamentals and exceeding the affordability of ordinary people, and the risk of property bubble has been increasing. Against this background, it is lawful and reasonable for the Government to propose the Bill to suppress speculation activities and cool off the overheated residential property market by giving priority to Hong Kong permanent residents (HKPR) in demand for property and maintaining the overall stability of Hong Kong's macro-economic and financial systems.

Nevertheless, on top of legality and reasonableness, I think the authorities should also give due consideration to compassion. It is noted that buyers have to declare their HKPR status on application for waiver of the enhanced ad valorem stamp duty. Why do the authorities not make the same declaration and verification arrangements for companies wholly owned by HKPR, so as to

resolve the controversies over the waiver of the Buyer's Stamp Duty (BSD) levied on these companies, and thereby reflect that the Government has acted with reasonableness? As we all know, acquiring property in the name of a company for long term investment is very common. Companies, especially small and medium enterprises (SMEs), usually mortgage the properties to apply to banks for loans to finance their businesses. As such, we should not undermine the business environment and even discourage business expansion of SMEs while trying to control the property market. I think Mr Abraham SHEK's CSA worth supporting. It proposes the refund of BSD paid by companies hold by HKPR upon satisfaction of certain conditions. If the adjournment motion is negatived later and our discussion continues, I believe Mr Abraham SHEK and other Members will elaborate in more detail about this CSA. Moreover, Mr Andrew LEUNG has put forward a CSA regarding a sunset clause. I very much hope that we can discuss these CSAs this week.

President, no matter how the Bill will be amended in the end, and how harsh the so-called "curb" measures are during the implementation process, such measures can only be regarded as extraordinary measures under extraordinary circumstances, and they cannot be taken as panacea. Home acquisition is the aspiration of the public, as well as an option for long term investment of the middle-class people with some savings. Therefore, the healthy and stable development of the property market is vital to Hong Kong's economy and people's livelihood. Today, we have to resort to the so-called "curb" measures to influence the property market, and the root of the problem is that the Government has long neglected the work on land supply, resulted in imbalance between housing demand and supply. Today, we have to use "curb" measures to suppress the property market, which is tantamount to drinking poison to quench the thirst. As a Cantonese saying goes, we are trying to "poison ourselves in order to kill the tiger that eats us". These measures can only be implemented for a short period of time and can never be implemented for extended period. To solve the problem of serious imbalance between housing demand and supply, we should expeditiously increase land and housing supply, so as to address at root the problem of rising property prices in Hong Kong.

President, history has proved that the Government had always lagged behind in implementing administrative measures to address the overheated economic activities. By the time the measures were put into effect, the market usually started to go down. Both the policy of "85 000 units" put forward by former Chief Executive Mr TUNG Chee-hwa, and the suspension of public rental

housing production by the last-term Government ended up with the same result. Today, we have no choice but to reverse the situation. I believe that more Members will give their opinions on this situation when we debate on the Bill this week. Now, the key factor lies on Mr Kenneth LEUNG's motion to adjourn the debate. This morning, some friends from the news media asked me for my views. I told them that I have to listen to Mr Kenneth LEUNG's reasons first, and also the response from Secretary Prof Anthony CHEUNG.

Mr WONG Yuk-man likes to fan the flames. Just now, he talked about the different views of Mr Jeffrey LAM and Mr Abraham SHEK on some relevant questions. I think there is no contradiction at all. Mr Jeffrey LAM said that the negative vetting procedures should be further considered under different situations, while Mr Abraham SHEK requested for a detailed review of the whole procedure, and if there were different procedures, how should such procedure be better reflected in the Bill? In fact, there is no contradiction, but different analysis and examination about the problem from multiple perspectives. Of course, I very much respect Mr WONG Yuk-man's views. He can form his own opinions, but I hope that there will be fewer attacks against other colleagues in this Council. This is not just my personal wish, but also the expectation of the public. They hope we can be rational and fair when analysing problems and making judgments.

Secretary Prof Anthony CHEUNG has already made it very clear that after listening to various views, he would express his views, but he will not further amend the Bill. In this case, should we discharge our duties by making use of the remaining time of this week to analyse the different CSAs of the Bill, as well as the Bill itself, so that the public and other Honourable colleagues will understand our views and finally, we can vote on each CSA? In this connection, is there any good reason to postpone this work?

Thus, although I have different views on some CSAs and the provisions of the Bill, I still call upon Members to concentrate on the work to be accomplished this week. I and Members belonging to the Business and Professionals Alliance for Hong Kong therefore do not support Mr Kenneth LEUNG's adjournment motion.

President, I so submit.

MS EMILY LAU (in Cantonese): President, I speak in support of Mr Kenneth LEUNG's motion. I hope the scrutiny of the Bill can be adjourned so as to allow the Administration and the Council more time to put certain things right.

Many colleagues in the democratic camp have spoken just now and I greatly concur with their views. I do not understand why Secretary Prof Anthony CHEUNG has made such an unwise move. Though he is currently responsible for housing and transport, he had conducted in-depth studies on constitutional affairs, government operation and public policies in the past, and should have much knowledge in these areas. Why did he take such action that has, as described by Mr Ronny TONG just now, violated the rule of law, violated the Basic Law and violated the relationship between the executive authorities and the legislature?

President, I called the Secretary on Monday and told him that we knew nothing about his proposal. I asked him if he should at least attend the special meeting of the Bills Committee and gave us an account of the proposal. I also called the Secretary General and the Chairman of the House Committee because I thought the latter would meet the Chief Secretary for Administration at 2.30 pm on Monday. I asked the Chairman of the House Committee to relay to the Chief Secretary that the Government's approach was improper. Consequently, Ms Starry LEE, Chairman of the Bills Committee, held a meeting at 4.30 pm yesterday but the Secretary did not attend the meeting.

I am really at a loss. The Secretary told me on the phone that he would not request for a meeting; but if a meeting was convened, he would attend. Maybe he meant government representatives, but not he himself, would attend the meeting. However, how come the Secretary was totally unaware of the significance of the matter and the grave concerns of Members, and did not consider that he had the due responsibility to come to the Legislative Council at the first instance to give an account of the matter. In fact, as commented by a number of Members just now, he should not have made such a move.

President, Ms Starry LEE, Chairman of the Bills Committee, said yesterday that we (probably including me) should discuss with the Government. I certainly have no objection to this. But we have not requested the Chairman or Mr Jeffrey LAM to hold discussion with the Secretary of their own accord after the Bills Committee had completed its deliberation work, and the practice proposed was totally unheard of by Members and unsupported by them.

Therefore, apart from the "three violations" mentioned by Mr TONG just now, the acts of the Chairman have also violated the practice of the Legislative Council.

Have we ever encouraged the chairman of a committee, especially a bills committee, to meet with the Administration of his/her own accord? I am not talking about the Chairman acting on behalf of Members, who has first discussed with Members on certain issues and then hold a discussion with the Administration. The present case is that the Chairman had discussion with the Administration behind the back of Members and then put forward various proposals at the press conference, which was really puzzling. Therefore, the Chairman of the Bills Committee had acted inappropriately on this occasion. Yet she is a Member of the Executive Council, and so is Mr Jeffrey LAM. Just now I met Mr LAM outside the Chamber and I suggested that he should speak in this regard. However, it turns out that it is Ir Dr LO Wai-kwok who speaks.

I do not know how many people will support the Government. But Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong have definitely indicated their support and so have some other Members. Please give your justifications. Nonetheless, as Legislative Council Members, they should not become the Government's accomplice in violating the practice of the Council or even damaging the rule of law of Hong Kong.

Earlier today, the Chief Secretary for Administration said in response to the report of the Public Accounts Committee that a corruption-free system is of paramount importance. We all know that such system has been built up over years but a single incident such as the case of Timothy TONG and the case of "Covetous TSANG" may ruin the whole system. The whole system of rule of law and parliamentary system have also been built up with a lot of efforts. Hence, despite our differences, we often respect the established committee system and various procedures. I hope Members will not lend a hand in crippling these systems and procedures.

How the system will be crippled? It is by encouraging the Administration to do something that is totally baffling and to make some unknown undertakings. In fact, during the final stage of yesterday's meeting, even the Chairman of the Bills Committee suggested that the Government should disregard which Committee stage amendments (CSAs) would be supported given that there are so many of them. So long as the CSA was passed, be it Mr Martin LIAO's or

Mr James TO's, it would be alright. Judging from Ms Starry LEE's tone, she might not care whether the Administration has made an undertaking. If that is the case, why should this undertaking be made? As such, before the closing of yesterday's meeting, I asked the Deputy Secretary to relay my suggestion to the Secretary that he should withdraw the proposal and proceed according to the established practice. Or he should formally request the President for permission to move a relevant CSA, or he should seek to pass this Bill first, and then propose the amendments as soon as possible in accordance with the formal procedures.

Regarding the present situation, I really hope that members of the public would know clearly that the Administration is doing something that is not provided for under the present system and that is not supported by many people. Maybe the Administration is trying to force us to accept that some extraordinary measures should be taken at extraordinary times in order to immediately mitigate the problem. While some members of the public strongly support this approach, some raise strong objection. In our view, even if we have to immediately mitigate the problem, we must expeditiously identify more land for housing construction, and this should be the most normal approach.

However, I fail to see that the Administration is trying to do so at the moment. Secretary Paul CHAN seldom wears a smile in his face as he is at his wits' end. His proposals for housing construction are often met with criticism and he could hardly resolve the opposing views. The Report on Public Consultation on the Long Term Housing Strategy prepared by Secretary Prof Anthony CHEUNG, which has taken more than a year to complete, has even made his ardent supporters disappointed. Now even the proposal of toll reduction at Eastern Harbour Crossing and toll increase at Cross Harbour Tunnel has caused much disappointment. I really do not know what has gone wrong. While the Secretary may also feel helpless after taking up the post for more than one year, the problems faced by Hong Kong need to be addressed after all. However, before he can solve those problems, he has added some more problems to us. This is indeed not a good thing!

The original plan is to deal with the problem with these "curb" measures at such extraordinary times. However, the Secretary has now put forward some proposals after holding a closed meeting with somebody. Members may not oppose a closed meeting between the Secretary and other people. But if it involves matters that are to be dealt with by the Bills Committee, why does the

Secretary ignore the most basic manners? If the Secretary considered the proposals of these Members desirable, he should personally put forward the proposals to the Bills Committee, telling members that he had accepted the proposals of certain members and would like to consult other members on such proposals. If the proposals were found to be infeasible after discussion, he should abandon such proposals. This is basically how the matter should be handled. If a proposal, no matter what its content is, is put forward indiscriminately without knowing how much support or opposition it will get at the Bills Committee or the Council, this will undermine the established parliamentary practice. How can we accept this?

This debate was supposed to take two to three days. But now it may take even longer for four to five days. I really do not know what to do. Therefore, in my view, the approach adopted by the Administration is really infuriating. Some opine that the Bill should be opposed altogether, while some suggest, as proposed by Ms Starry LEE, that the Bill should go through Second Reading, so that those CSAs can be considered. We support this approach. As mentioned by Mr Kenneth LEUNG just now, we do not request for postponing the Second Reading for four years, but just for two or three weeks, so that the Secretary can think clearly; he can either withdraw his undertaking, or propose CSAs in accordance with the formal procedure for amending a bill. This is the correct path to take. Once we have gone astray, the same mistake may recur, and the situation will be beyond redemption. This is not only the personal problem of the Secretary, but also involves the management of the whole SAR. I do not know how the Secretary can explain and convince himself, as well as other academics and colleagues. How can we explain to the public why we need to "build an unauthorized structure" over our system?

Maybe some people think that the Secretary is doing the right thing. However, from the Members belonging to different political parties and groupings who have already spoken today, we know that they do not approve the Secretary's approach. In this case, should the Secretary withdraw and admit his mistake? If the Secretary really considers that this proposal is very good, he should propose CSAs afterwards. However, judging from what the Secretary and his subordinates have said, they do not intend to do so at all. That is why I think he is just trying to deceive us in order to implement this expedient measure. What will happen in the future? It will be like what Henry TANG said during his debate with LEUNG Chun-ying that "you are lying". I do not wish to see

Ms Starry LEE having to say the same thing in future, although I believe she will say such words in a nicer way than Henry TANG. But this is not a good thing after all.

In fact, some people do not believe the Secretary will do so. But somehow, the proposal can mitigate the problem and can get more votes. That is why I mention property developers. But once property developers are mentioned, Mr Abraham SHEK, who represents the real estate sector, will be furious. I hope both Mr Abraham SHEK and the general public will understand why we have the impression that Hong Kong people have been working hard in their whole life only for a few major property developers. Therefore, given that the Bill has been scrutinized for more than a year, if it is said that no one, including influential electorates such as Mr Abraham SHEK, is in control behind the curtain, I certainly would not believe.

Some people must be doing the manipulation, no matter who they are. They can elect a person into the Council with only one hundred or two hundred votes. This is nothing but manipulation. The current problem is that it involves the operation of the Council, and I really do not wish to see people making trouble. Therefore, if Mr LEUNG's adjournment motion is not passed, we will proceed to Second Reading of the Bill or to examine the CSAs. By then, if Mr Martin LIAO's CSA is passed, I do not know where the Secretary's undertaking should be placed. Should it be attached to Mr LIAO's CSA? This is really ridiculous. Should the Secretary consider on what basis his undertaking is built on, and under what circumstances should it take effect? If CSAs that are proposed under formal procedures are passed, what will happen to the Secretary's undertaking? Should it be attached to someone's CSA?

President, we must really examine what exactly is the undertaking to be passed. Though the undertaking is not a piece of legislation, can it be a course of action that we can put aside and then adopt it at will after one or two years disregarding what kind of legislation has been enacted? As such, I really cannot figure out which Members will support this approach. Those who do support this approach must explain to this Council the consequences. In particular, Ms Starry LEE, Chairman of the Bills Committee, often claims that it does not matter as long as we vote for Mr Martin LIAO's CSA. If so, what about the undertaking that are ardently supported by some Members? When and how will the undertaking be fulfilled?

President, I cannot believe that in less than 20 years since the reunification in 1997, there have already been so many drastic changes in Hong Kong. Our corruption-free system is eroded by the cases of Timothy TONG and Donald TSANG as well as many other incidents. We consider there are serious problems. Speaking of our freedom, sadly we have to take to the streets on Sundays to fight against suppression of freedom of speech. Both the media, commentators, authors and even some Members are worried and dare not speak out. Our system and the rule of law have been destroyed jointly by the Secretary and some Members. Then what is the point of talking about remaining unchanged for 50 years? There are already so many changes in less than 20 years. No wonder so many people are now talking about migration. I am not sure whether Members have heard about this.

As such, I hope the Secretary will withdraw the proposal after hearing so many opinions. If he really wants to proceed with the proposal, he should put it forward through proper procedure. Why does he not do so? Is it because the CSA, if put forward through proper procedure, will definitely be voted down? If that is the case, do not put forward the CSA as it will not be passed by this Council. The Secretary goes astray simply because the CSA will be voted down. In that case, the Secretary should ask himself whether others and he himself will accept such proposals.

With these remarks, President, I support Mr LEUNG's motion.

MR LEUNG KWOK-HUNG (in Cantonese): President, if I offer you the post of a government official or the Chief Executive, will you accept? Will my words be taken seriously? There is a common Cantonese saying which goes "I will make you a government official tomorrow". Even uneducated folks know this is not reliable. Similarly, what the Government says may not be fulfilled. LEUNG Chun-ying gives promises of high posts and rewards, but not many people can attain that. I think the Government is illogical and shameless.

Luckily I have not taken part in the scrutiny of the Bill, which has now encountered great changes. No matter whether Mr Kenneth LEUNG's action is right or wrong, if his motion to adjourn the debate is passed, the Bill cannot resume the Second Reading. The Secretary is present now, please reconsider how you can lobby Mr LEUNG? Mr LEUNG is a sensible man and he will discuss with the Secretary. We love rational discussion.

The Secretary is taking a risk today. I do not know how he counts the votes because he has not explained his logic to us. Being a smoker, I have a strong feeling about a tax rise with immediate effect because this is what happens every time when the tobacco duty is raised. The increase takes immediate effect in order to prevent smokers from scrambling for cigarettes, tobacco traders from hoarding cigarettes and the emergence of illegal cigarettes. Although I am dissatisfied, I can do nothing because the Government is justified. I have also queried if the legislation on tax rise is not passed, who will get the extra tobacco duty charged. The answer is that the amount will not be refunded, but will go to the Government. There is nothing I can do because smokers are the disadvantaged group. Smokers will not get a refund of the extra tobacco duty charged. They have to store up cigarette packs and show the Government that they have bought a hundred packs of cigarettes after the Government announced the tax rise. But as the proposal to increase tax is not passed by the Council, they ask for a refund of the extra tax paid.

From this example, we note that the negative vetting or positive vetting procedure is adopted without a choice.

Let us take a look at our Government. When the "curb" measures were introduced, Franklin LAM Fan-keung still had the face to give that remark. Today, Mr Kevin ZERVOS, Director of Public Prosecutions, has overturned the verdict for him. In western political worlds, rulers often do the dirtiest things before they step down. They would then tell people that they have acted in strict accordance with the law and have done over the decades a lot of good deeds with the support of people.

The Department of Justice had unilaterally decided not to prosecute Franklin LAM on the ground that there was insufficient evidence. However, it is obvious that he really had a motive at that time. When he was a Member of the Executive Council, he had indicated that he would not sell his properties. But this is an example of breaking his promise and showing his misconduct.

PRESIDENT (in Cantonese): Mr LEUNG, you have strayed away from the question.

MR LEUNG KWOK-HUNG (in Cantonese): Have I? It is the Government which proposes that the "curb" measures should be subject to negative vetting because it should be kept confidential for fear of affecting the market. In my view, the Government has failed to do the job properly. Why can't I talk about this?

PRESIDENT (in Cantonese): Mr LEUNG, this Council is now debating on the motion proposed by Mr Kenneth LEUNG to adjourn the debate.

MR LEUNG KWOK-HUNG (in Cantonese): I know that. But there should be justifications. The Government is now doing something conflicting. It requests for positive vetting in the case of an upward adjustment of the rates, but not so for downward adjustment. Buddy, what kind of trick is this? If the same theory applies, both will lead to market fluctuation, right? President, you were a mathematics teacher at one time.

In view of something so unreasonable, I have to tell everyone the root cause, so that we know how illogical the Government is. Only then can I support the destructive proposal of Mr Kenneth LEUNG — everyone knows that it is destructive. I have no confidence in the Government. LEUNG Chun-ying even said that the one who reported the case of Franklin LAM to the Independent Commission Against Corruption should apologize to him. Why? When the "curb" measures were about to be announced, he had the chance to learn about it and had instructed his property agent to do something very unusual. He is being inconsistent in his words. He hastily put his properties on sale but failed to do so only because he was uncovered by the media ...

PRESIDENT (in Cantonese): Mr LEUNG, please focus your speech on the motion.

MR LEUNG KWOK-HUNG (in Cantonese): President, I will not apologize. My duty is to monitor the Government. Franklin LAM now returns to the stage and is appointed by LEUNG Chun-ying as a member of the Lantau Development Advisory Committee. In my view, we must not slack off in monitoring the Government. President, we have the power to monitor Government legislation.

When the Government introduces a bill into the Legislative Council, we scrutinize it. Any exceptional cases should be clearly specified in advance. An example is the curfew order. If the safety of Hong Kong is threatened, the Chief Executive is authorized to ask the Central Authorities to declare a curfew. This is not subject to monitoring because it is clearly stipulated and has been proven effective. We have no complaint about this.

Now the Government proposes positive vetting. This Bill has been scrutinized for some time and now the Communist Party is contesting with the Property Development Party. I cannot understand, maybe Mr Kenneth LEUNG can enlighten me, why an upward adjustment of the rates is subject to positive vetting and it is the other way round for a downward adjustment. Isn't it just a slight difference between upward and downward adjustments? Obviously, the Government intends not to consult us in future when there is a downward adjustment. In that case, what is to be monitored by us? LEUNG Chun-ying has appointed a tough lady to be the fighter. Yet the problem of small houses remains unsolved, the attempt to identify land fails, and "sub-divided units" cannot be replaced. Anthony CHEUNG indicated that rent control can be put under study but LEUNG Chun-ying immediately slapped him across the face by saying that there is no room for study ...

PRESIDENT (in Cantonese): Mr LEUNG, this Council is now debating on the motion moved by Mr Kenneth LEUNG to adjourn the debate. Please do not stray away from the question.

MR LEUNG KWOK-HUNG (in Cantonese): How have I strayed away from the question? The Government is illogical, isn't it? Please explain to me why an upward adjustment of the rates is subject to positive vetting while a downward adjustment is not. The Government fails to give an explanation. The Government should not be going too far, calling black white and being completely illogical. The dignity of the Legislative Council should be protected.

While I am a lazy guy and have not paid attention to this matter, I am outraged after listening to the Government's remarks. The pan-democratic camp should not think that they are very smart. What are they doing is groaning instead of roaring. What can we do if the Government is illogical? Should the

Legislative Council submit to the Government's despotic power? The so-called "double curbs" measures sound so invincible, but after implementing for some time, downward adjustment is made and exemption granted. Yet we do not have any say¹...

PRESIDENT (in Cantonese): Mr LEUNG, the Chinese character "喺" is not pronounced as "jyun4".

MR LEUNG KWOK-HUNG (in Cantonese): How should it be pronounced? I cannot hear it.

PRESIDENT (in Cantonese): The Chinese character "喺" should be pronounced as "fui3", not "jyun4".

MR LEUNG KWOK-HUNG (in Cantonese): You have told me before.

PRESIDENT (in Cantonese): You have strayed away from the question.

MR LEUNG KWOK-HUNG (in Cantonese): "置喺"(zi3-fui3). Alright, buddy ...

PRESIDENT (in Cantonese): Mr LEUNG, may I remind you once again not to stray away from the question.

MR LEUNG KWOK-HUNG (in Cantonese): ... you cannot stop me from speaking. I am speaking to my electorates. Dear electorates, if this Bill is passed today, we are just like having signed a deed to sell our life. Having given up our powers, what can we do when the Government reduces the rates in future? President, will you sign a deed to sell your life? No, you will not. You are just not allowed to speak. What is the rationale? If the Government has reached an agreement with the Community Party and the Property Development Party in

¹ Mr LEUNG Kwok-hung mispronounced the Chinese term "置喺"(zi3-fui3) as "置原"(zi3-jyun4).

future, to reduce the "curb" measures to nothing, or to grant more and more exemptions, until no one is actually subjected to any "curbs", we the Legislative Council Members will be condemned. Are Mr TAM Yiu-chung and Ms Starry LEE insane? Why would they accept a dishonoured cheque from the Government and betray themselves? This is certainly impossible. President, I know you cannot speak and so I speak on your behalf. This is something impossible.

All in all, do we need to vote for Mr Kenneth LEUNG's motion today? Of course we have to do so, because we should groan after being kicked. Frankly speaking, the Secretary is very unlucky recently. The railway incidents alone have already caused him much trouble. As in the case of railway accidents, problems have arisen, but the Government said that was no big deal and improvement would be made. How can we tolerate all these? At the beginning I thought Mr Kenneth LEUNG was not so "naughty". Why would he move this motion? The fact is that people will really groan after being humiliated.

President, today's discussion proves that the Government is unable to explain why the Legislative Council should give it special powers. At the beginning I thought the Government proposes negative vetting because property developers may take some action in the market as explained by the Government. I call on all colleagues to support Mr Kenneth LEUNG's motion. Secretary Prof Anthony CHEUNG, do you want me to request a headcount so that you can discuss with Members what would happen if the Bill cannot pass the Second Reading? If the Bill cannot pass the Second Reading, the situation will be awful. Why doesn't the Secretary withdraw the Bill? I also want to hear his views. Why is he so stubborn and why does he insult us?

President, in my view, we have been made a fool by LEUNG Chun-ying on the issue of the "curb" measures. Now he is asking us to make concessions again. Unlike a prediction by a feng shui master which can only be verified in 10 or eight years, I can tell that he will definitely do so. If we do not monitor today and let the Government push through the Bill, I must warn everyone that our names will be passed down with infamy when there is a downward adjustment of the rates in future. Can we trust in the Government's undertakings? I hope Honourable Members can think carefully and will not be trapped.

With these remarks, I support Mr Kenneth LEUNG's adjournment motion.

MR FREDERICK FUNG (in Cantonese): President, I think this Chamber is the most solemn place in the whole Legislative Council Complex and even in the whole territory. We hold our debates, discussions and arguments here. Most importantly, the decision we make after discussion involves a legislation which is to be complied with by everyone in Hong Kong. Today we discuss a Bill submitted by the Government. Members have proposed various amendments to it after discussion and we will debate and vote on these amendments.

I have all along thought that the procedure provided under a bill is set down in black and white and Members' amendments are also expressed in black and white. To my understanding, when a bill is passed with or without amendment, it is tantamount to passing a law written in black and white. If someone tells me that the express provisions are (1), (2) and (3), but the verbal provisions are (4), (5) and (6) and the law to be passed will include (4), (5) and (6) instead of (1), (2) and (3), I will be very confused. What are we discussing in this Chamber? What will we vote on? What is to be endorsed by us? If what is said counts — I do not know how long the Secretary will speak later on — if he speaks for an hour, will his speech be deemed as law?

To me, we pass a law by voting, but the words spoken by the Secretary, sorry for saying so, is not law, in particular if what the Secretary says is contrary to the bill passed with or without amendment. Later we can amend what the Secretary has said and we can also pass Members' amendments. No matter how high-sounding the Secretary's remarks are, if our amendments which oppose the Secretary's proposal are passed, then I will have to say to the Secretary what he has said will not become the law.

That is the solemnity of this Chamber. Here, it is not what one says counts. What is said does not mean what is done and an oral undertaking cannot be taken as law. "Undertaking" and "law" are two totally different words. I would like to ask the Secretary to look up the dictionary for the explanations.

This is my first time to hear someone say that "My undertaking may be different from the law and my undertaking is above the law." The practice of words spoken are actions taken is commonly employed by LEUNG Chun-ying and his governing team, but I have never dreamt that Anthony CHEUNG, the Secretary for Transport and Housing, would also employ this tactics. I have known him for over 30 years, and I have also known LEUNG Chun-ying for over 30 years. I always find them very different. However, today I find that they

are two of a kind, as both think that "words spoken are actions taken" and an undertaking is comparable to the law. I am a bit emotional because I have never thought that this friend whom I have known for over 30 years would do something like that.

President, this undertaking will bring confusion to the Government's policies, to the market and also to the future property market. Why do I say so? After submitting the two versions of the Bill, the Government said resolutely, "We have to deal with the overheated property market; we have to deal with the problem of ever increasing property prices; we have to pour a bucket of water down onto the property market to cool it off; and hence the Bill cannot be amended. Do you want to amend it? We will not listen. Sorry, you cannot amend it." I believe that Mr Abraham SHEK has also suffered the kind of treatment experienced by the pan-democrats when they try to lobby the Government.

So, what was the original undertaking? Originally, the Bill proposed to adopt the negative vetting procedure, so that the Government could take expeditious actions, the market would not be confused and had no chance for discussion, and thereby what was said by the Government could be done. That is permitted under the law. As such, the market has no time for speculative activities in either selling or buying of housing units. Sellers cannot take advantage of the Government's policy to lower the tax rates to sell the units as soon as possible for profits, and buyers cannot take advantage of the Government's policy to raise the tax rates to buy the units in advance to avoid paying more tax. Once a date is set by the Government, the policy will become effective.

What is the present situation? According to the Secretary's undertaking, reduction of the tax rates duty will be effected quickly, but not so for the increasing the tax rates as it is subject to the scrutiny of Members. Of course, how long do we take to scrutiny the proposal? Mr LIAO suggests six months, which may be sufficient as it is only a proposal. But more time may be needed, and we may discuss the proposal for several years. In other words, the discussion on the increase of tax rates may drag on for years, and meanwhile, any person, corporation or companies suffering losses as a result of the rate increase will have ample time for lobbying or even stalling, such that the policy of tax increase cannot be implemented. As regards the undertaking of the Government, it would cause the market ... What is the Government doing?

What are the stance, attitude and value of the Government? I really do not understand why the Government would make such an undertaking at the last minute. It is just like the goalkeeper who gives up at the last minute, so that the other team can score easily.

President, I am worried about this undertaking. The law provides that negative vetting will be adopted, but according to the Secretary's undertaking, a reduction of tax rates will be subject to negative vetting while an increase of tax rates will be subject to positive vetting. As such, if the Government is to raise the rates in future, as the Secretary's undertaking has no legal effect, the people or companies which suffer losses due to the rate increase would naturally think that the Government has breached the law. They might bring the case to court for a ruling. The Secretary is indeed challenging the law.

On the contrary, if the Secretary acts according to his undertaking ... Sorry, the situation I described just now is what will happen when the Secretary acts according to his undertaking. However, if the Secretary does not act according to his undertaking, that is when there is rampant speculation in the market and immediate measures should be implemented in accordance with the law, another problem will arise. In theory, the Secretary is acting in accordance with the law as the law allows him to formulate the relevant legislation subject to negative vetting procedure. However, in many of his speeches today, the Secretary mentioned about his oral undertaking. Hence, people who are affected or suffer from losses would use the Secretary's oral undertaking to challenge him. As the Secretary had made an oral undertaking that rate increase would have to go through the scrutiny process, these people would question why immediate measures have been taken by the Secretary. By then, the Secretary will be condemned whether he takes any actions or not. He will be trapped by his own oral undertaking, whether he acts according to his promises or not. He will be hung out to dry.

President, if the Secretary had not made this oral undertaking, I would not have supported Mr Kenneth LEUNG's motion, and Mr Kenneth LEUNG would not have moved the motion to adjourn the debate. It is exactly due to this oral undertaking that I have no choice but support Mr Kenneth LEUNG's motion.

There is another issue which is more serious. We always stress that in Hong Kong, the rule of law prevails and we even proudly tell others that the rule of law is the core value of Hong Kong over the past century or so. I wonder if I

am politically correct to say that the rule of law was transplanted to Hong Kong by the British who laid great emphasis on the rule of law. The rule of law is the "stains in the teapot" which should not be removed, or else the tea brewed in it will not be tasty. The Secretary's approach will lead to three outcomes. By then, I wonder how the Secretary would tell others that Hong Kong is still a place where the rule of law prevails.

First, this undertaking is not subject to discussion as it is not an agenda item. The undertaking is not subject to Members' amendment since it is not a motion and thus Members cannot amend it. Since this undertaking is not subject to amendment — for motions, Members can vote for or against it, abstain from voting, or propose amendments — will that create a loophole in respect of the rule of law?

Second, how long will the Secretary remain in office? Will he, together with LEUNG Chun-ying, remain in office until his tenure expires or will he follow LEUNG Chun-ying's footsteps and step down before his tenure expires? Will the next Chief Executive and the Chief Executive after next still appoint Prof Anthony CHEUNG as the Secretary so that he can remain in office indefinitely to keep his oral undertaking? Does the Secretary ever expect that he will step down one day? Will the new Secretary who succeeds Prof Anthony CHEUNG still have to adhere to this oral undertaking even though he has not made such undertaking? By meaning of the rule of law is that after a law is enacted, no matter LEUNG Chun-ying or whoever is the Chief Executive, he will have to abide by this law. To amend a law, the procedure has to be conducted in this Chamber. Is the present approach of the Secretary a manifestation of the rule of law or the rule of man?

Third, when there is a change of the Government and the Chief Executive, the new Chief Executive may have his new manifesto. I hope LEUNG Chun-ying will keep to his election manifesto. Future Chief Executives will all have their own manifestos. A's manifesto may not be the same as B's. What will happen then?

Under the above three situations, if an oral undertaking is regarded as a law which has a binding effect on the future Government, it will be the rule of man. This goes against the spirit of the rule of law in Hong Kong and against Hong Kong's core value.

President, in conclusion, I would like to say that the traditional wisdom of the Chinese can give a clear account of what is happening now. What I mean is "near vermilion, one gets stained pink; near ink, one gets stained black." The Secretary is staying too close to LEUNG Chun-ying and has picked up his habit of "words spoken are actions taken". That is why he would treat an oral undertaking as the law.

I support Mr Kenneth LEUNG's motion.

MS STARRY LEE (in Cantonese): President, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) opposes the adjournment motion moved by Mr Kenneth LEUNG.

President, the Bills Committee has taken a long time to scrutinize this Bill. Since its gazettal, we have worked on it for over a year, and 22 meetings have been held in total. We have at least spent 44 hours on the discussion of the contents of the Bill. It is the hope of both the public and various stakeholders that the Bill can be put to vote by the Legislative Council as soon as possible in order to minimize market uncertainties. President, in fact, Members all know clearly that in case the adjournment motion moved by Mr Kenneth LEUNG is passed today, the resumption of Second Reading debate may not take place for quite some time because the Council will proceed with the Budget debate, and given the Government's announcement in the Policy Address to re-initiate the setting up of a new Innovation and Technology Bureau, various Members have indicated that they might engage in filibustering in Council meetings. Although Council meetings will be convened in March, it is still highly uncertain as to whether the Bill could actually resume Second Reading debate in March without a hitch. In fact, Members should know very well the uncertainties involved. Therefore, we do not agree that the Second Reading of the Bill should be adjourned today. We hope that the Council will proceed with the debate and vote on the Bill as scheduled, so as to give the market a clear idea of Members' voting decision on the Bill.

Separately, the DAB considers it unnecessary to adjourn the debate because a meeting was held by the Bills Committee yesterday to allow for members' discussion. In this connection, the Government had submitted a paper on the matter, and the Legal Adviser had also presented his views on the undertaking to be made by the Government. While Members are free to take a

stand of disbelief or disagreement, the Government has already indicated clearly that no new amendment will be proposed. In fact, Members have a clear understanding of the papers already submitted to the Bills Committee, and they are ready to vote on the provisions of the Bill. If the Government has failed to lobby for Members' support, Members can choose not to support the Government or instead, support the amendments proposed by other Members. That is what we should be doing today. Hence, the DAB does not support the adjournment motion.

Here, I must also respond to the criticisms made by a number of Members just now on me personally, specifically about the communication between me and the Government. Members should know very well the interaction between members of a committee or Members of the Council and the Government. Such interaction is a norm. On the one hand, the Government will lobby for Members' support for a bill, and Members will, on the other hand, engage in counter-lobbying. In fact, it is normal for both members and non-members of any bills committee to have long-standing communication with the Government. Hence, I cannot accept the accusations made by some Members who described my communication with the Government as some kind of unorthodox "hook-up" or the use of other offensive expressions. Honestly, should a public official tell Members that he has never contacted or lobbied Members, I would say he is negligent of his duties. By the same token, should a Member tell me that he would never communicate with government officials and express his stance, I would also say that this Member is negligent of his duties. As Members, we should be responsible for the words we speak. I deeply regret that normal acts of interaction and communication have been demonized.

A number of Members spoke about the need to improve the relationship between the executive authorities and the legislature just now. As I see it, communication is a practical means to improve the relationship between the executive authorities and the legislature. Communication is a two-way process: the Government can approach Members, and *vice versa*. In fact, it is against the objective of improving the relationship between the executive authorities and the legislature to demonize acts of communication. If they still talk about wanting to improve the relationship between the executive authorities and the legislature, I think it is just saying one thing and meaning another.

Hence, I hope Members can interpret our normal interaction with the Government in a fair manner, without going over the top. Insofar as my

communication with the Government is concerned, it has been conducted on an ongoing basis for a long time in my capacity as Chairman of the Bills Committee, a Member of the Executive Council as well as a Member of the Legislative Council. I recall that not only Mr Abraham SHEK, but also other Members have told me that I should reflect the different stands of various members in the Bills Committee to the Government as much as possible. Stands of Members aside, it is also our duty to reflect the stands of other stakeholders in society because by sitting in the Council, Members are obliged to express the views of different people in the community. Nonetheless, I did not meet government officials in my capacity as Chairman of the Bills Committee because open discussion is held in the Bills Committee, with the minutes of all meetings being open documents. Moreover, government officials would attend the meetings of the Bills Committee, so that they can reflect the views of the Bills Committee to the Government and the accountability officials as and when appropriate. But it does not mean that I cannot reflect to them the stands of various members of the Bills Committee to the Government's proposal.

I recall that I have, on more than one occasion, relayed to the Government Members' concern about the negative vetting procedure. Moreover, Members have also suggested that exemption should be granted to charitable institutions as well as companies of which all shareholders are Hong Kong residents. I have also communicated with the Secretary, as well as many other different government officials, on those matters, in the hope that they can make proper response.

Just now, many Members have referred to the present proposal as a sudden U-turn or a brand new approach. I cannot agree with this view. I have relayed to the Government Members' concern about the arrangement to adopt the negative vetting procedure, in the hope that the Government can consider accepting Members' views or propose other options to address Members' concern. Of course, the result of lobbying can be a success or failure. In the end, the Government only accepts half of it and agrees that in case of upward adjustment of the rates which is more controversial, it will be subject to positive vetting by way of a bill to the Legislative Council. At that time, I considered it a good move for it was closer to the demand made by some concerned Members. Regrettably, it seems that this is not appreciated by some Members. But it is alright because ultimately, I consider this a step forward. The DAB has already stated clearly that it will accept the Government's proposal because the "curb" measures are extraordinary measures introduced under exceptional circumstances,

and it will be highly sensitive to introduce any adjustments to the "curb" measures. If such adjustments cannot be effected immediately, many unfair cases may result. In fact, one of the amendments to be discussed during the ensuing Second Reading debate is intended to address this matter, namely, some trustees of minors have purchased properties on the mistaken belief that they would be granted with exemption. We have proposed an amendment in the hope of providing them with exemption. Hence, we support the proposal. As such, we hope Members can find it relatively easier to accept the proposal. However, it is alright, and I think it is ultimately a choice of Members if they do not accept it. But all in all, the DAB considers that the Government's undertaking is a step forward, and hopefully, society will find it easier to accept.

I would like to respond to another point about changes proposed by the Government at an advanced stage of the Bill's scrutiny process. I think Members, particularly those who are more senior than me, would understand that this is nothing unusual. We all know very well why the Government makes such changes. The reasons are invariably the political reality or political considerations. Insofar as examples are concerned, I think Members would have a more vivid memory of the major changes made by the Government within a short time before the constitutional reform package was put to vote by the last-term Legislative Council.

Regarding the making of oral undertaking to respond to questions raised by Members, I have looked up the records of various Bills Committees and noted that this is not the first instance of adopting such practice. Of course, the circumstances may not be entirely the same, but I think it is still worthy to share an example with Members, that is, the Government's response in the context of the Residential Properties (First-hand Sales) Bill. At that time, Members requested that the Housing Authority (HA) be subject to the regulation of the Residential Properties (First-hand Sales) Bill in the sale of its properties. As we all know, under the proposed amendments, developments constructed by the HA would be exempted from Part 2 of the Bill only. According to the then record, "Notwithstanding that under the proposed CSA, the HA will not be subject to Part 2 of the Bill, it will continue to sell HOS flats in accordance with the principle of transparency as reflected in Part 2 of the Bill in future. The Secretary for Transport and Housing will assure Members of this at the resumption of the Second Reading debate on the Bill."

Hence, there are previous cases involving the making of undertaking by government officials in response to Members' requests. Of course, it is up to individual Members to accept it or otherwise, or how they would interpret the undertaking. Therefore, I hope Members or members of the public listening to our debate today would understand that events which took place this week are actually quite normal in politics. As a result of Members' counter-lobbying to the Government's lobbying, the Government finally agreed to make an undertaking out of the consideration of political reality in order to ensure the smooth passage of the Bill.

The adjournment motion is the subject of our debate now. As I said on the outset, we have already taken a long time to scrutinize the Bill, and various stakeholders also hope we can resume the Second Reading debate as soon as possible. Today, there is a commentary on the subject in the *Hong Kong Economic Journal* under the column entitled "An Expert's Analysis on the Property Market", and I agree with most of its views. Perhaps I will spend the rest of my speaking time on sharing this article with Members. The article is entitled "Members, stop wasting time on in-fighting!", and reads as follows. "What is meant by in-fighting? What is meant by going around in circles? Some Members of the Legislative Council surely have the model answers to these questions."

"The Stamp Duty (Amendment) Bill 2012 scheduled to resume Second reading in the Legislative Council today is related to the Special Stamp Duty (SSD) and the enhanced Buyer's Stamp Duty (BSD). The objective of the SSD is to combat short-term speculative activities, while the BSD serves to increase the property transaction costs of buyers other than Hong Kong Permanent Residents."

"Nonetheless, the focus of the Bill has suddenly strayed away from the implementation, scope and exemption of the SSD and BSD, as well as other discussions about the contents of the Bill, to the 'irrelevant' direction of whether a bill be first formulated by the executive authorities, or whether scrutiny be first conducted by the Legislative Council ... Alas! The question goes back and forth between positive and negative vetting, even the stance of Members on the SSD and BSD has become blurred. With all these confusions, do Members actually support or oppose the Bill? Should Members be expressing their views on the SSD and BSD *per se*, or the process of introducing the SSD and BSD? Is this another way of 'going around in circles' by switching the focus from the

contents of the Bill to the way of making laws? Some Members may even feel smug for they find some reasons to block or delay the Bill."

"According to a report in the *Hong Kong Economic Journal* yesterday, some owners who have changed their properties cannot get a refund of the tax paid and much capital has been locked up because the Bill has yet to be enacted. Have Members concerned themselves with this situation? It has been more than one year since the announcement of the SSD and BSD. Should somebody ask me, 'TONG Wing, what is your view?' I would say that I support the passage of the relevant duties without further ado, so as to avoid any groundless speculation in the market. The Government is also duty-bound to monitor market changes closely and suitably adjust the rates in a timely manner, including of course both upward and downward adjustments." As I see it, this analysis made by the commentator has accurately reflected the sentiment of many members of the public.

President, I so submit.

MR TONY TSE (in Cantonese): President, first of all, I have to declare that I am a property owner, and I also own an estate consultancy which may be involved in property transactions.

President, at the meeting of the Bills Committee on Stamp Duty (Amendment) Bill 2012 (the Bills Committee) held at short notice yesterday, a motion without legislative effect was passed to request the Government to postpone the resumption of the Second Reading of the Stamp Duty (Amendment) Bill 2012 (the Bill). Due to a clash with other meetings, I had neither attended the Bills Committee meeting nor taken part in the voting. But regardless of whether it was yesterday's motion or the adjournment motion today, my stance has always been that I do not support the adjournment motion.

President, my decision is primarily premised on the consideration of what best should be done for members of the public, the market, or even society as a whole? Since its establishment in January last year, the Bills Committee had held 22 meetings in total. As I see it, if the Council has to spend so much time on the discussion of the Bill, many possible reasons may be involved. Perhaps it is because the drafting of the Bill was not comprehensive enough, or perhaps the

Government could not give convincing and detailed explanations to questions raised by members when the contents of the Bill or the relevant amendments were discussed at the numerous meetings of the Bills Committee, such that the concerns expressed by members of the Bills Committee could not be well addressed, making it necessary for the Bills Committee to spend over one year on the scrutiny of the Bill.

In fact, should the Bill to implement the stamp duties be delayed further, so that it cannot be enacted expeditiously, the meaning or effect of the "curb" measures introduced by the Government will be greatly impacted. It will not be beneficial to members of the public and the market as a whole. As far as I know, there are doubts among the legal profession, the property sector as well as the general public as to when the Bill to implement the "curb" measures would be enacted. In other words, the market is uncertain whether this Bill will eventually be passed. To a certain extent, such uncertainty will impact on the decisions of various sectors in the community regarding property transactions. Hence, I consider that the early scrutiny or enactment of the Bill will send a clearer message to the market and provide a legal basis for the payment of duties by both the seller and the buyer. Nonetheless, as I note from the questions raised by many Members just now, they are unconvinced by the Government's undertaking and worried that in future, the Government will renege on or breach the oral undertaking made by the Secretary today due to various reasons. Hence, I hope the Government or the Secretary can consider whether further action can be taken, so that Members will have confidence on the Government's undertaking, and stop impeding the scrutiny or even implementation of the Bill.

As such, I would like to reiterate that the Secretary should perhaps consider the suggestion made by Mr James TIEN, that is, whether the oral undertaking can be presented or fulfilled in another way? For instance, can the Government make the relevant amendment by way of a bill within a specified short time frame according to certain specific conditions, so that the oral undertaking given today will become a bill with legislative effect. In that case, the Legislative Council can give effect to the undertaking made by the Government or the Secretary today through the scrutiny of the relevant bill. I hope the Secretary can consider this proposal seriously.

Nonetheless, as the adjournment motion moved by Mr Kenneth LEUNG has not set a specific time limit on the adjournment, I am worried that as evident in previous cases, once the adjournment motion is passed, the Bill will be

adjourned for a long time or even indefinitely because the Government cannot reach a consensus with Members due to various reasons. We have no idea how long the discussion between the Government and Members on the relevant amendment or the relevant Bill will take. Under the circumstances, the uncertainties pertaining to the "curb" measures in the market will prevail. The entire market or the relevant practitioners in the industry will remain doubtful as to whether the Bill can eventually be passed. As such, they will have to make certain decisions in the face of uncertainties. I think we should minimize the occurrence of such an eventuality as far as possible. As such, I believe that it is the hope of many people that the scrutiny of this Bill by the Legislative Council would be completed expeditiously, so that they would know whether the Bill is finally enacted or not.

On account of the above reasons, I do not support the adjournment motion. President, I so submit.

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

MR ALBERT CHAN (in Cantonese): President, I speak in support of the adjournment motion.

President, during my discussion with the Under Secretary two days ago, I clearly stated that the People Power fully supported the resumption of the Second Reading debate, Second Reading, Third Reading and the passage of the Bill. We basically agree that in the face of the frantic increase in property prices in Hong Kong, and in the light of showing concern for people's livelihood, the "curb" measures, though far from ideal, are possible options when no other choices are available. However, after meeting with the Under Secretary and on my way to the Ante-Chamber, I saw two representative and authoritative Legislative Council Members, who also serve as Members of the Executive Council, talk to some journalists for half an hour. I then asked the journalists what they were talking about, and I was told that they had reached an agreement with the Government. We all know what the agreement is, that is, in case of a downward adjustment of the stamp duty rates, the negative vetting approach will be adopted; in case of an upward adjustment of the stamp duty rates, a positive vetting approach will be adopted.

President, after learning this news and as you know about my character, I was infuriated and my blood pressure immediately rose by at least 20, or even more. I think this agreement is the worst, most brutal and shameless decision that I have ever seen in my political career spanning 20 years since 1991.

Why was I so infuriated, President? Because when we engaged in some kind of bargaining in the past, it was not uncommon to see various political parties of this Council, especially the "rich men's party", threatening the Government at critical moments. And yet, after an agreement was reached, an open one in particular, the Government often agreed in this Chamber to conduct further studies or reviews within a specified period of time, say one or two years. This has become an established practice. Also, private agreements are pretty common. In order to secure and lobby Members' support, the best way is to have a certain Member elected as the chairman of a particular committee. This is not uncommon either. Bargaining, transfer of benefits, mutual harbouring and exchange of benefits are practices commonly adopted by Members from the "rich men's party", especially those in power or with influence.

Therefore, I always wonder what is so sacred about this Chamber. Instead, it is utterly filthy. By resorting to some kind of shilly-shallying at critical moments, the "rich men's party" and the royalist party, in particular, have exchanged benefits with the Government. They have done so merely for the benefits of their own party, for the sake of establishing personnel network, taking advantages of their position to obtain benefits, building up personal reputation using the influence of the relevant positions or committees, or increasing one's political or economic capital. These practices were common in the past two decades and they were nothing strange to me.

Yet, Secretary Prof Anthony CHEUNG's decision to reach an agreement with the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Business and Professionals Alliance for Hong Kong (BPA) has ignored the sacred duty of this Council to scrutinize bills. It does not matter if there is any exchange condition or they have obtained personal benefits and achieve political goals by twisting the bribery laws or taking advantage of the grey areas, as this is, after all, their own business. If I have sufficient evidence, I would report to the Independent Commission Against Corruption, and if they are convicted, it means that they are stupid. But so far, negligible prosecution has

been instituted because not many people would be aware of the political exchange behind those agreements. Even if anyone finds out, no one would report it.

Yet, the present agreement does have policy implication. This is not a review as no timetable has been drawn up for any review or study. Rather, a new policy has been clearly spelt out. As Members may be aware, the entire political system in Hong Kong is some sort of hegemony, an executive-led system. Private bills or motions tabled at this Council will not be implemented even if they received overwhelming support from Members.

In the past, this Council has endorsed numerous motions that do not have legislative effect, including motions passed in various panels. There is nothing we can do if the Government chooses to neglect them. The Panel on Development had previously passed a motion urging "Sub-divided units Paul"² to step down, but the Government neglected it. Our surprise attack has achieved success as some Members from the royalist or "rich men" party had already left for their early vacation, thus enabling us to outnumber them and securing the passage of the motion. And yet, the Government has turned a blind eye to this motion.

Numerous motions have been passed in this Council in the past, but the Government has neither implemented nor dealt with them. Although some of them has received the overwhelming support of this Council, the Government continued to turn a blind eye to them. The present undertaking made by the Secretary implies that the relevant policy will be implemented as pledged by the Government, which may bring changes to the spirit and principle of the legislation. In case there is a need to change the policy, it should be done according to the book and the Rules of Procedure, which means that the proposed amendments would be discussed and then put to vote. Depriving this Council of the right to vote is tantamount to operating in a black-box or making backroom deals, and is a collusion of a couple of Honourable Members with the Government. Perhaps this is the mandate of the Government. Given that the Executive Council is governed by the principle of collective responsibility and the Government is now threatened by two Executive Council Members, are you telling me that this is not authorized by the Government? If this is not an authorization of the Government, these two Executive Council Members should be dismissed right away.

² The nickname of Secretary Paul CHAN for operating "sub-divided units" in the past.

Those Executive Council Members threatened that if the Government does not adopt their proposals, Members of their party will vote against the Bill or refuse to support certain government policies. This has breached the basic principle of collective responsibility. Should they not be dismissed? The Government has secretly given mandate to and worked in collusion with these two Executive Council Members to initiate changes in policy, thereby depriving other Bills Committee members of their right to know and discuss. Is this not a contravention of the mechanism and principle of deliberation? The Government announced the implementation of the relevant policy 18 months ago on 26 October 2012, and the Bills Committee, which was formed on 11 January 2013, has been operating for more than one year. If other political parties have any views on the Bill, why didn't they air them earlier for deliberation by the Bills Committee, or seek consensus through public discussions? Instead, two political parties have reached an agreement with Secretary Prof Anthony CHEUNG by making a backroom deal. All along, I do not have trust in Secretary Prof Anthony CHEUNG. Thus, soon after he assumed office and came to this Council, I had confronted him by asking him about his position on the June 4 Incident. He remained silent. When he was the Vice-Chairman of the Democratic Party, I had reprimanded him for being a political aristocrat and I thus have no trust in him from the very beginning.

I had condemned Anthony CHEUNG within the Democratic Party at that time, and had later been subject to disciplinary action. He has betrayed his conscience, destroyed the mode of operation of the Legislative Council and defeated the fundamental legislative intent. Being an academic, he reminds me of Prof NIU in Lao She's novel *Four Generations under One Roof*, who became a traitor in the end. Anthony CHEUNG has simply neglected all the fundamental spirit and principles and the due dignity of a human being, and has betrayed his conscience by becoming a "LEUNG's fan".

Therefore, President, the adjournment motion proposed by Mr Kenneth LEUNG today in this Council has a very important meaning, and that is, to return due dignity to the Legislative Council and let Members perform their due obligations. As the Bills Committee is obliged to scrutinize the Bill, it is natural for it to discuss all the amendments or changes relating to policies. Certainly, the two major political parties have reached the agreement with the Government under secret politics without informing Hong Kong people or other political parties. We have been betrayed. It is very likely that Mr Kenneth LEUNG's adjournment motion will be voted down today, and the darkest period has already

set in in this Council. Soon after LEUNG Chun-ying was elected the Chief Executive, we had predicted that Hong Kong would be ruled by Hong Kong communists, and our core values would definitely vanish. I hope that Mr James TIEN will stay for two more minutes as I am going to highly commend him. In his remarks made yesterday, he mentioned that the Government has become communized. Did he say that? He used the phrase "Mainland culture". But the phrase "Mainland culture" actually means "communization". It is only that he dared not say "like the Communist Party". By saying "Mainland culture", did he mean the Chinese culture or the culture of the Tang or Han dynasty? The so-called Mainland culture actually means "communization", am I right?

He said making an oral undertaking is indeed a kind of Mainland culture, and the current mode of operation has actually "communized" this Council. This is not the kind of operation mode that Hong Kong should adopt given our core values. Rather, this is a new development mode. Many Members have talked about the numerous undertakings made by the Government in the past, which as far as I can recall, were concerned with the conduct of reviews and studies. No formal undertaking has ever been made in respect of policies. The formal undertaking made amidst the resumption of Second Reading debate of the Bill does have legal effect. In the Tiu King Leng incident, I won the lawsuit for the Tiu King Leng residents because of an undertaking. At that time, the British-Hong Kong Government had undertaken to provide them a place of permanent residence, and "permanent" was the magic word for our victory in the lawsuit. In the end, the Government had to make compensation as if it was private land. Can Members tell me if undertakings have any legal effect?

Furthermore, the undertaking made by the Government in respect of policy is not only applicable for the current term. Unless otherwise specified, its applicability should not be restricted to the current or future term. This would ensure that the Government's undertaking would have sustainable effect. Unless a date is specified in the Bill, after which new policies will be introduced by the Government to abolish the existing negative or positive vetting approach, or new announcements or decisions will be made to replace the previous arrangements, otherwise the previously announced approach is indeed a policy, and an undertaking as well, and should be applicable to the current or future term. Should the Secretary better say current life and next life?

Such brutal intervention and shameless move of the Government is rarely seen in the past. Worse still, it is seen as a kowtow to property developers in

some ways — Mr Abraham SHEK shook his head in disagreement. As proposed, the negative vetting approach will be adopted for any downward adjustment, which is beneficial and favourable to property developers. Knowing that property developers will not be happy about the upward adjustment, the positive vetting approach is proposed to minimize the threats to them. Although this may not bring any immediate benefits to the developers, the threats would be minimized in a relative sense.

The Secretary may, in his later response, say that it has nothing to do with policy. Is he bold enough to say so? If so, I would request for a judicial review. If he dares to say that there is no policy implication, I would like to see if this would constitute any ground for judicial review. As a matter of fact, I am also considering to apply for a judicial review and it is very likely to be justified for the Government has initiated a policy change without voting when the Bill is due to be passed. We should better seek help from the barristers — the Civic Party has a lot of barristers — to see if this is a justified ground for judicial review. The Government's undertaking has, to a certain extent, changed the fundamental spirit and principle of the legislation.

Therefore, President, I advise that Secretary Prof CHEUNG should show some noble integrity instead of acting like a lackey. We have too many lackeys these days. And, the Secretary also has many lackey colleagues lately (*The buzzer sounded*) ...

PRESIDENT (in Cantonese): Mr CHAN, your speaking time is up.

MRS REGINA IP (in Cantonese): President, do I need to declare interest in the first place? Should I make a declaration of interest before I start?

PRESIDENT (in Cantonese): Members should know the rules provided in the Rules of Procedure.

MRS REGINA IP (in Cantonese): President, since November 2010, the last-term Government had unprecedentedly introduced a series of Special Stamp Duty (SSD) to curb the demand in the property market. On 20 November 2010, the

Government first introduced the SSD to increase the amount of stamp duty and require that both the buyer and the seller of a property were held jointly and severally liable for the relevant duty. On 26 October 2012, the Government introduced a "sterner" version known as the Buyer's Stamp Duty (BSD). Again, on 23 February 2013, it introduced a brand new enhanced ad valorem stamp duty (AVD), which is also applicable to non-residential properties. All these measures are unprecedented and have been described as a "brutal intervention of the market". The strong controversy about the measures have also attracted much criticism and aroused strong repercussions among critics, property developers, people engaging in the estate agency field, as well as property owners who intend to sell their properties at high prices.

Why did the Government adopt such controversial measures? Because property prices had risen to a level that was beyond people's affordability. As Ms Starry LEE has pointed out, during the period from 2008 to October 2012 when the "sterner" version of BSD was introduced, property prices had almost doubled. By 2012, the monthly increase had reached 1% to 2%, which had far exceeded the affordability of members of the public. Many people, including not only young people, but also professionals, considered that property prices were unaffordable. They had serious resentment, thinking that wealth had been transferred to a small group of people who owned properties.

Under these circumstances, and particularly in consideration that housing and land supply could only be increased after a certain period of time, the Government reluctantly announced the introduction of a "sterner" version of the BSD on 26 October 2012. This was undoubtedly a brutal intervention of the market. As a number of Members have asked: When will the Government exit from the market? When will there be downward adjustment of the rates? How can the Government determine when supply and demand resumes proper balance? Increasing land supply is no easy task. If the Government can increase land supply so easily, there would not be mismatch in supply and demand. These measures can be described as "necessary evil", meaning that such negative measures have been reluctantly introduced in view of the long time taken to increase land and housing supply. Hence, the Government has resort to demand management measures to curb demand.

Undeniably, following the introduction of the "sterner" version of BSD and the enhanced AVD in February 2013, which is applicable to commercial buildings, the market has cooled off. Of course, property prices will not drop at

once. Some people even said that property prices have not dropped at all in spite of the "sterner" measures. This is because property prices are "sticky" in an economic sense and are not likely to fall as property owners tend to hold their properties for a certain period of time.

However, after a certain period of time, especially when the external environment has started to change, such as the United States is likely to taper, interest rates may rebound, coupled with the slowdown of the Mainland economy, property prices have started to fall after the Chinese New Year. Some estate agencies pointed out that property prices have only fallen from its peak, but have yet to return to a reasonable level which potential home buyers ...

PRESIDENT (in Cantonese): Mrs Regina IP, it seems that you are speaking on the resumption of the Second Reading debate of the Bill rather than the adjournment motion proposed by Mr Kenneth LEUNG.

MRS REGINA IP (in Cantonese): Okay. President, I will speak on that motion.

During the past few days, the New People's Party and the People Power had conducted a public opinion poll after the Government proposed the resumption of the Second Reading debate of the Bill. We had collected 733 questionnaires from 23 districts in four days and interviewed 363 people using text messages. A total of 1 096 people had therefore been interviewed. The findings showed that 48% of the respondents supported the "double curbs" measures and opposed any amendment, thinking that the proposed amendment (including an exemption for companies owned by Hong Kong people) would undermine the effect of the "curb" measures; 23% of the respondents considered that the Government should cater for the investment need of Hong Kong people, and a small percentage of respondents, 8%, opposed the "curb" measures.

If the adjournment motion proposed by Mr Kenneth LEUNG was passed, then as Mr Tony TSE has asked, when will the Stamp Duty (Amendment) Bill 2012 (the Bill) be tabled at this Council again? This will cast great uncertainties to the market. As I have just said, a declining trend set in after the Chinese New Year. Respondents to our opinion poll and people whom I have

met hoped that property prices will continue to fall so that they can buy their own flats, which is the wish of many Hong Kong people.

If the Second Reading debate of the Bill is indefinitely postponed, this will cast great uncertainties to the market. People engaging in the estate agency field told me that the worst scenario is property prices remaining more or less at the same level. Not knowing if the Bill could be passed, potential buyers are pretty worried that property prices might rebound if the Bill fails to get through. They are thus reluctant to purchase properties, and property transactions significantly shrunk as a result. On the contrary, if the Bill is passed, both the potential buyers and sellers would decide if they should purchase or sell their properties. This would help the estate agencies to break the deadlock of zero transaction.

Since Mr Kenneth LEUNG has cast doubt on the procedure, he requested to indefinitely postpone the Second Reading debate of the Bill. This will not only cause damages to people engaging in the estate agency field, but also people who intend to purchase or sell their properties. As I agree that the market should be provided with more clear messages, I consider that the Bill should be expeditiously passed.

The Second Reading debate is proposed to be postponed because Mr Kenneth LEUNG and a number of Members have called into question the negative vetting approach and they are also dissatisfied with the oral undertaking made by the Government. I want to reiterate that, as I have said in the Bills Committee meeting held yesterday, many important government policies were implemented through oral undertakings or administrative measures in the past. What kind of policy is more important than that having an implication on human right? The famous "touch base" policy introduced during the Hong Kong British era, under which illegal immigrants who had reached the urban areas would not be repatriated, was not implemented according to the law, but in accordance with the policy of the Hong Kong British Administration. It was not until October 1980 when there was massive influx of illegal immigrants that the Hong Kong British Administration was forced to abolish the policy. At that time, the Hong Kong British Administration had only made an oral announcement of the three-day amnesty period, and no legislation had been enacted for this cause.

Certainly, how the oral undertaking is phrased by government officials and on what occasions is the undertaking made are of significant importance. The

oral undertaking made by the Hong Kong British Administration at that time had aroused some misunderstandings, and as a result, an illegal immigrant won the case in a judicial review and obtained the right of abode upon the expiry of the amnesty period. From this, we can see that important policies may not necessarily be implemented through the law, but may also be carried out through administrative measures or undertakings. As the undertaking made by Secretary Prof Anthony CHEUNG in this solemn Council has been put on record in the Official Record of Proceedings, or Hansard, I am not worried that it would be rescinded by the Government.

I agree with one point made by Mr Albert CHAN. I do not believe the undertaking or policy will vanish when the current-term Government comes to an end on 30 June 2017, because if this policy ... If the Bill is able to get through, coupled with the undertaking made by the Secretary as put down in Hansard, the policy will remain in effect until it is amended by the Chief Executive in Council of the next-term Government. And, even if there is a need to make amendments, the amendments proposed in relevant legislation must be approved by this Council.

I therefore think that people must have confidence in the undertaking made by the Government, that is, a downward adjustment of the rates subject to negative vetting, while an upward of the rates, asking people to pay more, will be taken forward by tabling a new bill at this Council. The New People's Party accepts such an undertaking.

We support the Government and oppose the motion for adjournment. We hope that the Bill can be passed as early as possible.

President, I so submit.

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

MR WU CHI-WAI (in Cantonese): I have heard many colleagues said they hoped the "curb" measures could be passed. There is no doubt that the Democratic Party also hopes that measures will be put in place to suppress property prices and stop them from soaring, so that the normal home purchase arrangements of the public will not be affected.

However, the problem we face today is that the Secretary tries to address the problems discussed by the Bills Committee by means of an oral undertaking. Is this an appropriate approach? Will this practice imply that the efforts and long time spent by the Bills Committee on scrutinizing the Bill have been wasted?

In fact, people have been saying for a long time that the Bill may have many loopholes which need to be plugged, and a number of amendments should be proposed to deal with these problems. Of course, the core issue which people are most concerned about is, after the passage of the Bill, what challenges and impacts will be brought to society when there is an upward or downward adjustment of the duty rates in future?

The Secretary has often said that both upward and downward adjustment of the duty rates will bring great changes to the market as a whole. This is certainly true. However, if the Secretary puts forward his ideas through proper channel — such as downward adjustment of the rates should be effected immediately, and upward adjustment of the duty rates should be subject to positive vetting procedure — and allows us to have more time for discussion, I think there is a possibility that the proposal may still be accepted and endorsed by the Council.

Regarding Mr Martin LIAO's amendment, it is actually very close to the idea of the Secretary. Mr Martin LIAO suggests that the proposed adjusted rates of the Government can be effected immediately, but the Administration has to submit a bill on the adjustment and the scrutiny work must be completed within six months; otherwise the tax rate will be reverted to its original level. Thus, the entire Ordinance will be very clear and can be complied with, as even the scrutiny arrangements will be clearly stipulated.

On the contrary, the oral undertaking of the Secretary is a different matter. According to Secretary's oral undertaking, downward adjustment of the duty rates will be implemented with immediate effect; while for upward adjustment, a bill will be submitted to the Council for scrutiny. The scrutiny period may be long and nobody can tell when it will be completed. If we look from this perspective, is it contrary to the problem mentioned by the Secretary? Under this undertaking, the situation we worry most is most likely to happen. Then, will this be conducive to the stability and consistency of the legislation? Obviously, the answer is no.

Therefore, I think Mr Kenneth LEUNG's adjournment motion is a timely move to save the Government. The Government can then formally submit a Committee stage amendment (CSA), so that we can act in accordance with the law, unlike the present situation under which we can only place our hope on the Secretary's undertaking, or on the hope that the undertaking can last forever.

In fact, if the Bureau or the Government really wants the policies to last forever, they should not just hinge upon an undertaking. As I have said, it seems that Mr Martin LIAO's CSA, which has similar effect as the Secretary's undertaking, has actually got the support of many Members from different parties in the course of our discussion and it can attain the effect as desired by the Secretary. Why is it that the Government has refused to accept the CSA proposed by such a brilliant person, a Member who has never participated in the discussion of the Bills Committee but has, after listening to our discussion, come up with such a brilliant proposal which can settle the disputes of the Council and can tally with the views of the Government? Why does the Government prefer to solve the problem by means of an undertaking instead? How can the Secretary's undertaking override a CSA? This is really most peculiar.

The work of the Legislative Council is to enact a legislation with clear and coherent provisions, so that people can have a legal basis and act in accordance with the laws. The legal advisor of the Bills Committee made it very clear yesterday that the nature of the Government's undertaking was not legally binding. Furthermore, as the proposed section 63A has been so clearly worded, it would be impossible to apply the decision of the English Court of Appeal in a case, that is, we cannot confirm or explain the implications of this Bill on the basis of other texts, wordings or records. That is the crux of the problem. Secretary, have you addressed this point?

At the meeting of the Bills Committee held yesterday, we heard Miss Agnes WONG say repeatedly that if such approach was not adopted, the legislation would lead to more uncertainties. However, as I have analysed earlier, why would the authorities think that Mr Martin LIAO's CSA, which requires the scrutiny of the Bill to be completed within six months, leads to more uncertainties, while the Secretary's undertaking with uncertain validity period would result in fewer uncertainties? This is simply incredible.

On the other hand, Deputy Secretary Miss Agnes WONG said yesterday that if the Government really wanted to jump the gun and push through the

legislation by force, Members would not agree; and without the consent of Members, nothing could be done. Hence, Members could still oppose the Bill. However, please note that after the passage of the Bill, it is clearly provided in the legislation that negative vetting procedure will be adopted by the Government. If we just rely on the undertaking made by the Secretary today and if the undertaking is not honoured, the only way we can overturn the Secretary's undertaking is by means of a Member's CSA and the separate voting system will apply. In other words, with the support of only 18 Members, regardless of whether they are returned by functional constituencies or by geographical constituencies through direct election, the majority opinion of the Council can be controlled. In that case, how can this reflect the decision of the Council and the opinions of the majority of Members? In that case, Secretary, as what many Members have said in this Council today, the undertaking you have made will harshly turn this Council into a rubber stamp, which is very disrespectful to the Council.

Secretary, I am speaking in support of Mr Kenneth LEUNG's adjournment motion. Firstly, the Secretary can propose afresh, after a very short interval, the resumption of the Second Reading of the Bill, and the scrutiny work can proceed. We raised the question at yesterday's meeting of the Bills Committee, and learned that the Bill could be scrutinized after mid-March and before the debate on the Financial Budget or before the "filibustering" which the Government was most worried about. If the Secretary can do so, it will also be conducive to the Council for he can put forward his ideas properly through a CSA, and is this not more reliable than an oral undertaking?

Deputy Secretary Miss Agnes WONG also made another argument yesterday and that was, the reason why the Government had not proposed a CSA was that it did not think this idea was wrong. However, if the idea was not wrong, why does it have to make an undertaking? If the idea of the Secretary is not wrong or if he believes that he should insist, is his undertaking redundant? As such, the undertaking of the Secretary reflects that Deputy Secretary Miss Agnes WONG's statement that "the Government does not think that this idea is wrong" has a logical fallacy. If the Government thinks that amendments should be made, and the current approach of handling by an undertaking is better, he should do so properly by proposing a CSA, so that the undertaking of the Secretary can be reflected in the legislation, instead of adopting the current approach of just giving an oral undertaking.

I find what a Member said yesterday was quite appropriate. He said, "The Chinese character for official (官) has two 'mouths' (口), while the two Chinese characters for senior official (高官) have four 'mouths'". Thus, it is possible for us to achieve our goal simply by talking about it in the Council. However, this is definitely not the work attitude which should be adopted by the Legislative Council. Therefore, I speak in support of Mr Kenneth LEUNG's adjournment motion today and hope that the Government can hear what I have said. I also hope that colleagues of the pro-establishment camp who have been opposing the motion would consider seriously whether your objections will do good or harm for the Government?

Thank you, President.

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

MR PAUL TSE (in Cantonese): I am sorry President. I thought Mr Abraham SHEK was going to speak, so I have just asked him whether he was going to speak.

President, members of the public who are watching the proceedings of our meeting today may not quite understand why we have spent so much time on discussing an issue which should not have been too controversial, yet, it has now caused such a big crisis. Today, we have yet to discuss the Bill on the so-called "curb" measures, and we have yet to discuss which procedure should be adopted in increasing or reducing the duty rates, that is whether the formal and usual procedure for legislative amendment should be adopted or whether we should allow the Financial Secretary to change the duty rates by means of a relatively quick and simple procedures through amending the Schedule of the relevant by-law of Cap. 117.

The only issue under discussion today is the current approach adopted by the Government. Though Members have asked for the inclusion of provisions to allow the Financial Secretary to adopt such practice, if the Government does not exercise its power after it has been given the authority and after the relevant legislation has been enacted, what should be done then? In particular, as many Members with legal background have said, the question is whether this is an issue of not acting in accordance with the law, or is it a case, as claimed by the

Government in lobbying Members, that the Government has not exercised the authority delegated? This illustrates why an issue, which is very minor in the eyes of the Government and considered to be a concession to appease the Members, has suddenly backfired and created what we can call a big crisis. And unexpectedly, owing to this issue, the Secretary has been constantly reprimanded, criticized or even personally attacked.

President, perhaps we may note that the relevant subject actually involves three aspects. According to our understanding of the provisions, in the past, when the Government made certain so-called statements or undertakings during the legislative process of the Legislative Council, the Court could not make interpretations through examining the relevant documents. However, later — especially after the authoritative ruling of the English Privy Council on *Pepper v Hart* in 1992 — the Court can in fact do so when appropriate and subject to certain conditions. However, this is not our focus and we are not discussing the touch base policy which Mrs Regina IP has repeatedly emphasized. The issue in question is not simply a policy issue, it does not involve the problem that the Government makes unpredictable changes in its policy, or how the Government deals with relatively major issues, such as how to handle "doubly non-permanent residents" or whether one year or seven years' residence in Hong Kong is required for application of Comprehensive Social Security Assistance. In respect of decisions made in these areas, the Government can sometimes through administrative measures, address the issues in a fast, resolute and definite manner.

Our current problem is, after the passage of this seemingly insignificant legislation, will the Government refrain from exercising its authority when appropriate, that is, even though the Council is only allowed to adopt a negative vetting approach, but as the Government does not exercise its authority empowered, it thus prefers to go through the normal positive vetting procedure. President, this certainly has to depend on what legal provisions are involved. Even if some legislation are actually passed, in order to solicit support from various sectors of the community, especially to reduce opposition and show compassion to the public, the Government will often give a so-called grace period for the public to adapt to the enacted legislation. Thus, it is a very common practice for some legislation to be enforced at a later date after their passage. Furthermore, there are situations in which even if legislation has been enacted, some government departments, prosecuting authorities in particular, but not necessarily the Department of Justice ... Some departments or law-enforcement agencies which initiate prosecutions by way of summon may make some

compromises by not exercising their power, enforcing the law or initiating prosecutions under certain circumstances. Such incidents are common, but the premise is that public interests have to be taken into account and consideration will be made on a case-by-case basis to examine if the relevant practice is appropriate.

However, it seems that the question in issue today does not involve the abovementioned aspects, and it is simply a question of whether the Government is not complying with the law or not exercising its power? The Secretary and officials consider that they have been wronged. Thinking that the other party is so valiant, they thus make a concession. Mr WONG Yuk-man said that in the political arena, sometimes the wicked loses out too. I would not use this term, but I have to point out that sometimes, a well-intention measure to smooth the relevant process may have undesirable result if it is implemented at the inappropriate time, with an inappropriate approach and by inappropriate persons.

Several Members have made the above criticisms, but in fact, Ms Starry LEE and Mr Jeffrey LAM are not the only ones involved. If Members think that these two Members, being Executive Council Members as well, were the "Trojan horses" in the "Trojan War" and have sneaked in this Council to play certain roles, please do not forget that there are not only two but three "Trojan horses" in this Council, and the third one is Mrs Regina IP. In fact, she had played the role of a "Trojan horse" on the issue on granting exemptions to children under 18, but this "Trojan horse" was smarter and had revealed her true colours at an earlier stage, thus she had not been severely condemned. As for the other two "Trojan horses", they appeared on stage at a later time and adopted a sneaky approach — perhaps I should not said so, but it was a fact — they only "exposed" themselves at the last minute. Of course, we also have to count the half "Trojan horse", Mr Martin LIAO, who joined in for no reason as he is not a member of the Bills Committee, thus making everyone very uncomfortable. The incident is as simple as that.

Of course, this is not the first time that the Government has behaved in such a manner. In the past, the Government had repeatedly failed to play by the rules by adopting administrative means to "cut the Gordian knot". It did not adhere to the long-standing practice of civil servants by laying everything fairly and properly on the table for discussion. Very often, it attained the goal by hook or by crook, paying no heed to the timing and the method; all it cared for was to get things done in a "swift, smart and swell" manner. Of course, it does not

matter if things can be done in a "smart" and "swell" manner, but very often, the case is neither "swift" nor "smart" and "swell", as in the case of the "powdered formula restriction order". In that case, the Government also wanted the order to be imposed in a "swift, smart and swell" manner, but during the process, even the term of powdered formula and rice-based milk cereal were not clearly defined, leading to wrongful law enforcement or even wrongful detention of tourists in many cases. This explains why in the process of enactment of legislation and law enforcement, we should not, for the sake of administrative expedience, give up due prudence, and violate, amend or ignore the established civil service mechanism at will.

President, I am afraid this incident will become another vivid example. This is originally a simple issue, but now we really do not know how the question can be settled. I hope that the Secretary will get enough votes. Though we do not have to debate on whether the provisions of the Bill should be passed at this time, I would still like to respond briefly to the reasons put forward by the Secretary and the Permanent Secretary for adopting the current approach. First of all, the usual reason they give for having to act swiftly is to avoid market disorder. Frankly speaking, the market has already absorbed the relevant information. If there are still people who do not know about the "curb" measures implemented in Hong Kong, he might as well have come from outer space. As such, I think that it is unjustified to argue at this time whether the Bill should be passed now or after a week or two, especially we have scrutinized the Bill for over one year.

Secondly, President, what is the justification for adopting different approaches for dealing with upward and downward adjustment of the duty rates? I totally failed to understand the logic, for no matter the duty rates are increased or reduced, there are bound to be people who are satisfied and those who are dissatisfied; and for sure, someone would make the wrong decision in buying or selling their properties. Under such circumstances, if the Government thinks that upward adjustment of the duty rates should be fast and resolute, the same should also go for downward adjustment; otherwise some people will suffer. Under such circumstances, I fail to understand unless — I have a conspiracy theory, which is also mentioned by many colleagues, including Mr Alan LEONG — in order to pass the Bill promptly and properly and to reduce resistance, the Government and some members of the industry have almost indicated that they will only reduce but not increase the duty rates. In fact, as chances for increasing the duty rates are not high at all, it will not be necessary to consider

that upward adjustment of the rates should be conducted in a fast, resolute and definite manner. Their thinking is that upward adjustment can go through normal procedure with sufficient time for deliberation, while downward adjustment should be effected quickly. As such, the opposing views from some sectors can be reduced and more reliable votes can be secured for passing the Bill. Of course, no one knows whether this is the true reason, but many voices in this Council in fact think that the current practice of the Government can be described as "go for wool and come home shorn".

President, the other reason given by the authorities is that many sectors of the community may be very confused for they are not sure whether the Bill will be passed or not, so they do not know whether they should buy properties. I would like to make two additional observations. First, we are now talking about the purchase of properties and not bread or consumer goods. In Hong Kong, all property transactions must be handled by lawyers for there are no other alternatives available, and lawyers will surely handle the transaction prudently. Certainly, first of all they have to be aware of the "curb" measures and during the deliberation of the legislation on "curb" measures, they are obliged to make provisions for the money which may be involved with regard to the "curb" measures, that is the stamp duty. Lawyers will not release this sum of money unless they run away with the money. Under such circumstances, since it is well-known to all that the Bill is under scrutiny, the situation of having people suffering any losses or paying excess taxes because the Bill is yet to be passed will not occur.

Secondly, when an official — I need not disclose his name — tried to lobby us, the issue of granting exemptions to children under 18 was mentioned. The policy has changed overnight, from granting exemption to not granting exemption. We explained that some people might be affected, as they assumed that the original intent of the Bill was to grant exemptions to children under 18, they have thus acquired properties in trust, and this change of policy was unfair to them. However, the official did not share our views and according to him, by common sense, before the formal passage of a bill, it only has the chance of being passed, and it still has the risk of not being passed.

As such, everyone should understand this rationale, and any person with common sense — of course they will have a even better understanding when advised by lawyers — will understand that this Bill which has yet to be passed will have their own "pros and cons", and anything may happen. Under such

circumstances, President, I am afraid that the reasons given by the Secretary or Permanent Secretary on the urgent need for employing extraordinary means have not been built upon a complete set of logic. Therefore, under such circumstances, with regard to this point alone, I am afraid that the approach of not complying with the law or not exercising the power conferred — depending on which perspectives we adopt — does not seem to be a proper interpretation.

President, as in the case of powdered formula which I have mentioned earlier, I am afraid that the difficulties encountered by the Government this time are more or less self-inflicted, for its past actions have neither been very "fair and proper" nor "gentlemanly". I remember that in the case of powdered formula, the Government had proposed an amendment in regard to the definition of powdered formula and rice-based milk cereal, and everyone agreed that the legislation should only be enforced after it had been appropriately amended, and the relevant amendment should also be dealt with by means of negative vetting. However, as a result of subsequent filibustering activities, the scrutiny deadline was missed, and the original inappropriate definition were passed and continued to be applied. However, the Government had behaved most "ungentlemanly" and refused to amend the definition which it also found to be inappropriate. I had even indicated that I would move a Private Bill in the hope that the Government would re-adopt its own definition, but the Government had continued to make excuses for refusing to accept my proposal, and also refused to grant permission for relevant procedures to commence. The fact that the Government did not honour its undertaking made members of the public and the Council regard that it does not pay to deal with the Government. As such, that is why such a minor issue, a concession in the eyes of the Government, an approach of not exercising the power conferred, has now blown up into an accusation of not complying with the law. I am afraid that the Government has to take this opportunity to seriously reflect on its act, otherwise this will only become a red light which warns of another storm, and even more situations may occur in future, causing the Government to fail in the slightest unexpected incident.

MR ABRAHAM SHEK (in Cantonese): President, many colleagues have mentioned my name today and many colleagues have also said that what the Government has done this week is simply a gesture of "going down on bended knees", with the intention of paving the way for real estate developers. Some even said that there are many masterminds behind the scene who seek to make it

difficult for the Bill to be enforced. All the abovementioned speculations are totally unjustified, unfounded and made with the only intention of politicizing the issue.

The adjournment motion moved by Mr Kenneth LEUNG involved important issues which need to be discussed. First of all, the reason why many Members support the Government and oppose Mr Kenneth LEUNG's motion is that the Stamp Duty (Amendment) Bill 2012 has already been discussed for 14 months and must be implemented as soon as possible so as to avoid adding factors of instability to the market. However, the motion has brought up a constitutional issue and, as Dennis has said earlier, this is a very serious matter and we cannot just act rashly because there is such a need. We cannot proceed with something which is constitutionally wrong.

The Secretary has really made a mistake this time, for he has failed to understand the spirit of separation of powers, that is, the executive authorities, the legislature and the judiciary have different duties, as provided under the Basic Law. The legislature has its own legislative work which needs to be handled. We have held 23 meetings but the Secretary only attended once and I do not know whether he will attend more meetings. If he really intended to listen to the views of Members, he would not have assigned a civil servant to attend our meetings and answer questions, but would have tried to look at the whole picture. That way, he would not do a disservice out of good intention as in the current situation, in which he pleases one party and antagonizes the other, but still thinks that he can win everyone's support. In response to the amendment moved by "Ah TO" of the Democratic Party, he thought that he should refrain from "going too far", and had thus made a small concession. However, the fact is, he should not have done so and should stay firm instead of acting under the delusion that he could please everybody.

I have read a book on Theodore ROOSEVELT, the 26th President of the United States, who made this famous quote: "Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it, wherever found, against the wrong." Even his staff had stated clearly that a negative vetting approach should be adopted and have been saying the same over the past 14 months, so why the sudden change? It can be said that this is totally unjustified.

I do not know why he has made a U-turn and who is he trying to please? The pro-establishment camp has not made such a request, though two Members of the pro-establishment are involved. However, one of them does not represent the Business and Professionals Alliance for Hong Kong (BPA), and it is just that he is also a Member of the Executive Council. As for Ms Starry LEE, it is true that she had talked to the Bureau a number of times and, through communications and discussions with the Bureau, she had succeeded in fighting a lot for us, such as the issue on redevelopment and others which we are now talking about. I would like to thank her. However, changes cannot be made to the entire constitutional framework and turn the legislation into an oral undertaking just because two Members had held discussions with the Secretary. Now the Secretary has asked us to trust him on the basis of an oral undertaking, and I really do trust him for he is actually a nice person. Mr Frederick FUNG said that he has known the Secretary for more than 30 years and he is very disappointed today, but I am not disappointed because he is a very nice person and will, therefore, always be nice. However, how can he try to please this and that person at the same time? It is virtually impossible. The entire Bill has now been ruined by his action, and this is the first point I would like to make.

Secondly, Article 64 of the Basic Law provides that: "The Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Council and already in force". In other words, once we have passed the Bill, his oral undertaking will become meaningless, therefore I would like to ask the significance of this undertaking. Mrs Regina IP, who also serves as a Member of the Executive Council, has indicated earlier that this was acceptable in the days of British Hong Kong, but at that time, there was no Basic Law and they only had Letters Patent, thus the Governor of Hong Kong could naturally do anything he pleased. Therefore, we cannot make comparisons with the past practices since it is clearly provided under Article 64 of the Basic Law and the Government has to comply with such provisions. Now the Secretary has asked us to trust him only on the basis of an oral undertaking, but I would like to ask how we can trust him.

The subordinate of the Secretary once pointed out at the meeting of the Bills Committee that exemptions must be granted to children born in Hong Kong under the age of 18 for they have been granted such rights under the Basic Law. Later, Mrs Regina IP suddenly had this great idea that exemptions should not be granted to all children born in Hong Kong under the age of 18, the Government changed its position again and reinterpreted the law as if it was the Standing

Committee of the National People's Congress, so how can we trust him? Some people purchased properties because they trusted the Government, but now they have to pay tax amounting to several million dollars or several hundred thousand dollars, all because the Government has made a U-turn. So how can they trust the Government again?

This is not such a big problem, but if it is stipulated in the Bill that a negative vetting approach should be adopted, it cannot be changed arbitrarily into positive vetting for the whole logic simply does not make any sense. For example, the current "curb" measures are enforced by way of negative vetting, but according to the Secretary's oral undertaking, in future, downward adjustment of the duty rates will be subject to negative vetting, while upward adjustment of the duty rates will be subject to positive vetting procedure. This completely runs contrary to the current practice and I would like to ask what the logic is. Whom do you want to favour? Some people say you want to favour real estate developers, but real estate developers does not want this, what they want is a clear legislation, like what Ir Dr LO Wai-kwok said earlier, a legislation which is legal, reasonable and guided by compassion. If you fail to do so, this constitutes a dereliction of duty constitutionally.

The Legislative Council must safeguard our legislative work and protect the rights granted to us under the Basic Law. Regarding Mr Kenneth LEUNG's adjournment motion, I expressed my support yesterday. Mr LEUNG intended to give the Government more time to consider whether amendments could be made. And, since all stamp duties have been paid over the past 14 months, the fact that the passage of the Bill will be deferred for one or two weeks is really no big deal. Hence, the argument that the situation is uncertain is deceptive for the situation is very clear. The Government definitely has enough votes and there is absolutely no problem at all. Perhaps, I should congratulate the Secretary for he has done what Chief Executive LEUNG Chun-ying has failed to do over the past one and a half years. The Secretary is really quite successful for all Members of the Democratic Party have given him their votes of support. However, the Secretary has become the victim of his own success, for his success has come too easily since the democratic camp will support whatever he proposes.

Mr Frederick FUNG said earlier that he knew everything about the Secretary and that is really impressive! Perhaps the Secretary may really be able bring them together in future and make all Members of the Legislative Council listen to him. Regarding this Bill, many people have made various comments about real estate developers, and Ms Emily LAU has even said earlier that real

estate developers are backstage manipulators, but I am very sorry, real estate developers are not manipulators at all. If they are, Abraham SHEK does not have to stand here, pointing out which clauses of the Bill have problems and need to be revised. Abraham SHEK is only trying to exercise the rights conferred by the Basic Law to protect the rights of his children and grandchildren. However, some Members have acted like the three wise monkeys which do not see, hear and speak, and let those rights conferred by the Basic Law be taken away. I will expound on this point later.

I hope that the Secretary will do what he thinks is right, and it is most certain that this Bill will be passed. However, I was taken by surprise by the sudden proposal made by the Secretary last Friday. Why did he make such a sudden move? The Secretary has acted as if he was holding an "expandable stick", the length of which could be adjusted at will and he could act arbitrarily. This should not be allowed. The legislation of Hong Kong must be fair, open and impartial with emphasis on compassion, legality and reasonableness, and with transparency. If the Secretary relies on the rule by man and his words, it will still be futile no matter how much we trust him, for Anthony CHEUNG will not be in this post forever, Paul CHAN or someone else may take up this post in future. Therefore, we hope that we can carry out the duties of the Legislative Council and do our job properly in accordance with the powers conferred by the Basic Law, especially in respect of the scrutiny of bills.

Furthermore, I hope that the Government will not give people the wrong impression that supporting Abraham SHEK means supporting real estate hegemony and seek to demonize property developers. Property developers are not hegemonic. Who is hegemonic? The answer is the Government which owns the most land and it is hegemonic. As we can see, the Government is now exercising its hegemonic powers to get things done.

Finally, President, I have to explain why the BPA has to support the Government and oppose the motion of Mr Kenneth LEUNG. It is because we want to exercise powers granted to us under Article 73 of the Basic Law to do our job properly. The Government did not accept the advice of Members yesterday and insisted on resuming the Second Reading of the Bill today. This is the right of the Government and we have the right to oppose or support it. As regards this point, I think we are looking at the same issue from different perspectives, with the same objective of doing our job properly. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wish to speak, Secretary for Housing and Transport, do you wish to speak again?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I have listened very carefully to the remarks of Members and their criticisms about the Government, including myself. I often ask myself if I have been malevolent in dealing with the housing issues, including this Bill on the "curb" measures. Dr LAM Tai-fai used the expression "more haste, less speed" to describe my efforts. Mr Abraham SHEK also said that my efforts may backfire. Certainly, in future when we look back at what we did, I believe we will have different evaluations and comments. I will seriously reflect upon these comments of Members. What are the consequences of my decision? Why will this approach of not exercising the power be deemed as not complying with the law, as Mr Paul TSE has just said? I will respond shortly to these allegations.

I would like to tell Members that I certainly will not despise the dignity or power of the Legislative Council. Mr Abraham SHEK is right in saying that, under the Basic Law, the Legislative Council has the power to amend any bills introduced by the Government, and it can also vote down all government motions, including the undertaking I make today on behalf of the Government regarding the approach to be taken in increasing the duty rates. If Members do not believe the undertaking I make today on behalf of the Government or have doubts about me, they can ignore what I said and determine how they will vote on other Members' amendments. We are exercising the executive and legislative powers specified in the Basic Law, and I will explain why I propose such approach later.

I also know that in handling issues concerning the property market, I take every step cautiously. As an accountability official, I understand that I may face disastrous consequences at unguarded moments. However, I have definitely not been malevolent in coming up with the idea.

When a number of Members debated on the adjournment motion moved by Mr Kenneth LEUNG, they focused on why I would make an oral undertaking on behalf of the Government. This is not only an oral undertaking, but has also been expressed clearly in black and white in the paper submitted to the Bills Committee yesterday. I also promised that I would explain this undertaking further when I speak on the Second Reading of the Bill. However, as this issue has now been raised, I think I should give an explanation first. First, I would like to clarify that we absolutely do not have any conspiracy; and we do not intend to manipulate others to get rid of this Bill, and we do not have the interests of property developers in mind when we come up with this idea. We have simply taken the legislative process into consideration and we have really listened attentively to the views of various parties over the past 14 months.

Some Members queried why I did not attend the Bills Committee meeting yesterday and whether I was evading the issue. That was certainly not the case. I would like to clarify that I had attended two meetings of the Bills Committee as Mr Abraham SHEK has just mentioned. I attended these meetings to respond to some specific questions raised by Members. As a Director of Bureau, I wish to clarify or respond to these issues or proposals, and explain the latest situations on behalf of the Government. These issues include redevelopment projects and giving exemptions to companies owned by Hong Kong permanent residents and charitable institutions, and so on.

Indeed, I had other commitments yesterday afternoon, though I did try to reschedule these appointments, I failed to do so. The undertaking to be made is stated clearly in black and white in the paper and it is not an idea that I have casually developed. The highest level of government officials have taken various factors into consideration before coming to the conclusion that making this undertaking is a more appropriate approach in response to the concerns of the stakeholders concerned and various parties. As this undertaking is proposed by the Government, it is definitely appropriate for the governing team, including the civil service team, to brief Members and answer queries. The meeting of the Bills Committee held yesterday is not the last chance to discuss this issue. Members have expressed their views on the adjournment motion of Mr Kenneth LEUNG just now. I believe Members still have plenty of opportunities to express their views at the Second Reading of the Bill.

Members have just raised some major issues in their speeches. The first issue is about procedural matters, that is, whether the normal procedure has been violated; the second issue is, whether we have destroyed the rule of law; and the third issue is, what exactly is my undertaking and is my undertaking trustworthy. Speaking of procedure, we originally stated in the Bill that negative vetting procedure will be adopted, as in the case of subsidiary legislation, to adjust the duty rates in future. This is not a new practice but a well-established mechanism. Different mechanisms are stipulated for cost-related amendments in different ordinances. For example, the Financial Secretary is authorized under the Companies Ordinance to amend the levels of specific costs and he may adopt this mechanism; the Secretary for Financial Services and the Treasury is authorized under the Exchanges (Special Levy) Ordinance to amend the levels of the special levy of the Stock Exchange and the commodity exchange, and this mechanism may also be adopted. Therefore, when we proposed the first-round demand-side management measures, including the Buyer's Stamp Duty, the enhanced Special Stamp Duty in October 2012, the Financial Secretary adopted the negative vetting procedure according to precedents; thus, this mechanism can be adopted.

If there are legal provisions on a certain mechanism, must the Government adopt the mechanism? Can it choose not to adopt the mechanism but to adopt another mechanism that gives the Legislative Council more opportunities and more time for deliberation? The Government can introduce a bill for deliberation by a Bills Committee set up by the Legislative Council, and the bill will be passed through the three-reading procedure. As Mr Paul TSE has just mentioned, the powers have not been exercised to a certain extent, but there are precedents. For example, when the Motor Vehicles (First Registration Tax) Ordinance was amended to increase the First Registration Tax of vehicles, the Government chose to formally introduce a bill on the amendments instead of making amendments in the form of subsidiary legislation.

I wish to say that this approach of making an undertaking has not suddenly emerged and it is not something that has never been done before. I would also like to point out that the authorities are not replacing the law with an oral undertaking. We undertake that if the duty rates are to be increased, even though the legislation specifies that the Government may follow the negative vetting procedure, we would, in response to the views of Members, spend more time on introducing a bill, which will have to go through the three-reading procedure. I would like to ask Members, how would the adoption of a

three-reading procedure in handling a bill violate the legislative process? In what ways has the rule of law been violated? This arrangement gives the Legislative Council the opportunities to have a thorough debate on the bill introduced by the Government to increase the duty rates.

Members may ask why the Secretary or the Government would have a different attitude towards increasing and reducing the duty rates. At the outset, we have actually adopted the same attitude. We believed that it was very important to respond quickly to market changes, no matter the increase or reduction in duty rates or exit strategies was concerned. Thus, when the Financial Secretary announced the first round of demand-side management measures, he already said that the negative vetting approach would be adopted. The Bills Committee has held more than 20 meetings, it was only at a very late stage that Members raised the issue of whether such arrangement could be made, and why couldn't the Legislative Council be given more time for discussion. Members can look up the relevant records for verification. In the two amendments proposed by Members, including the amendment proposed by Mr James TO, the major argument is why the Legislative Council cannot be allowed to deliberate first and why the negative vetting should be adopted. Similarly, the objective of Mr Martin LIAO's amendment is to give Members six months' time to consider the bill in detail. There are strong views from Members and they emphasized the importance of the Legislative Council's deliberations. The Government has heard their views, and other Members have also reflected to us their views. According to the views we have got, if there are major changes in the market and the Government has to reduce the duty rates or even withdraw the "curb" measures, people do not have strong views and they believe in the Government. However, there are grave concerns about increasing the duty rates. Therefore, we have finally made the decision on this expedient measure. Members may ask if this decision is excessive or if it is necessary. This is open to discussion and opinions differ, so Members can make their own judgment.

Nevertheless, I wish to tell Members that the Government has absolutely no intention of making the Legislative Council a mere figurehead or bypassing the Legislative Council. If we are to increase the duty rates, we will introduce a bill so that the Legislative Council will have ample opportunities for deliberation as the bill needs to go through the three-reading procedure. It demonstrates that we respect the status of the Legislative Council and we are acting in response to the major argument in Members' amendments, that is, Members should be given the opportunities for deliberation on measures to increase the duty rates. When

we consider the matter, we should note the uncertainties to be created in the market by different amendment mechanisms. Regarding the amendment of Mr James TO, as the positive vetting procedure is adopted, the legislation passed will take effect only after its gazettal. However, after the Government has introduced a bill, a message is sent to the market, but it may take a month or so or even longer to complete the deliberation, what changes will take place in the market during this gap period? Will there be a lot of short-term moves? Will certain people take advantage of this gap period? The Government has these concerns.

As to the amendment of Mr Martin LIAO that the motion proposed by the Financial Secretary should have immediate effect, Mr LIAO has made reference to the Public Revenue Protection Order. Nevertheless, the Legislative Council can have six months to scrutinize the Financial Secretary's motion, and it can make amendments or vote down the motion. Certainly, the Legislative Council can propose a lower increase rate of the duty rates; it can reject the reduction of the duty rates; or it can reject the Government's proposal to withdraw the measures. Of course, the Legislative Council can still do so if the negative vetting procedure is adopted. What are the differences?

If a subsidiary legislation is formulated subject to the negative vetting procedure, the subsidiary legislation will have immediate legal effect. Even if the Legislative Council amends or votes down the subsidiary legislation a month later, its legal effect within that month is not questionable. Therefore, the impact on the stability of the market is very different. If the approach stated in Mr Martin LIAO's amendment is adopted, when the Legislative Council votes down or amends a motion proposed by the Financial Secretary, the effective date commences from the date the motion is announced by the Government. In other words, within the one-month period, there will be speculations in the market about the results of the deliberation of the Legislative Council. People who purchase properties within that month would ask if they have to make additional payments in future. Therefore, there are a lot of possibilities and unstable factors. When the Government considers the ways in which amendments will be made, its major concerns are the impacts on the market. As the market is very sensitive, in particularly the real estate market, the time critical factor is crucial. Thus, we have taken this expedient measure after much consideration. Certainly, I understand why Members have doubts and have raised criticisms.

Some Members asked if they can believe in me as I am going to make this undertaking on behalf of the Government. After listening to the speeches of Members, I think that they may have two very different attitudes towards this undertaking. On the one hand, some Members are afraid that I will not honour the undertaking or the next-term Government or Secretary will not honour this undertaking. On the other hand, some Members may be concerned that I may honour this undertaking because it is provided in the Bill that negative vetting procedure will be adopted. Members have these doubts, and I respect that they have considered the matter from the perspective of the legislature, and they should have such doubts. I hope my response can dispel Members doubts and explain the factors that the Government has taken into consideration. According to the rules of procedure, during the Second and Third Readings, some Members, including Mr James TO, will propose amendments on this amended mechanism. Although the Government disagrees and has reservations, the amendment has practically been proposed and Members can make a choice. Similarly, Members may also make a choice as far as Mr Martin LIAO's amendment is concerned. I can even say that if the Bill originally introduced by the Government has not specified the negative vetting mechanism, the present mechanism is to make amendments by way of a bill subject to the three-reading procedure. Hence, it is not true that a new mechanism has been introduced in addition to the existing mechanism or the mechanism proposed by Members.

Members may ask, according to the undertaking made by the Secretary on behalf of the Government, a tougher path with longer time span is needed for increasing the duty rates, and is it worthwhile to do so? I have already explained why we have made this choice and I hope Members would understand that. To be sure, we are not bypassing the Legislative Council or challenging the dignity of the Legislative Council in enacting legislation under the Basic Law. I urge Members to understand the views of the Government and vote against this adjournment motion.

PRESIDENT (in Cantonese): I now call upon Mr Kenneth LEUNG to reply. This debate will come to a close after Mr LEUNG has replied.

MR KENNETH LEUNG (in Cantonese): I would like to thank 19 colleagues for conducting a thorough debate on my motion without notice, and I would also like to express my gratitude for the fact that most Members who have spoken

supported my adjournment motion. President, I would like to declare interest. I am now serving as a tax expert and have also owned properties, and I have to further declare that I know Prof Anthony CHEUNG and though not for as long as Mr Frederick FUNG, I have known him for more than 20 years.

The purpose of my adjournment motion is not to speculate whether Secretary Prof Anthony CHEUNG has acted with good intention or with ill intention. I have always focused on the issue instead of the person. As a member of the Bills Committee, I have attended 22 meetings in total and have also spent a lot of time on scrutinizing all clauses and amendments. In my professional capacity, I have spent more than 20 years on dealing with different taxation matters, including stamp duty. However, I was most surprised to learn from the newspapers on Saturday morning that, despite the fact that the Bills Committee had agreed on some amendments, a new government proposal has been made without notice. It is proposed that for an upward adjustment of the duty rates, a positive vetting approach should be adopted by way of a bill, while a downward adjustment of the rates will be subject to negative vetting. I was most surprised.

An official asked me whether I move this adjournment motion because I am unable to stomach the insult. As a matter of fact, it is not a question of whether I can stomach the insult and those who are familiar with me would know that I will not wilfully play tricks, but why do I have to move this adjournment motion? This is because I think what the Government has done has firstly absolutely disregarded the relationship between the executive authorities and the legislature which many colleagues have talked about; and secondly violated the spirit of the rule of law.

Several colleagues of the pro-establishment camp have spoken earlier and please allow me to respond to them one by one. Ms Starry LEE, many colleagues have criticized you; I have not made any personal attacks or launched any criticisms at you. However, since you have defended yourself, I would like to remind you for a few points. You are wearing four hats: a Member of the Executive Council, Vice-Chairman of the Democratic Alliance for the Betterment and Progress of Hong Kong, Chairman of the Bills Committee and also a Member of the Legislative Council. So, which hat are you wearing when you hold discussions with the Secretary in private? You do not have a button which you can just press and say I am now wearing Hat A and thus have nothing to do with Hat B. Since you are a Member who is wearing four hats, you should have a sense of propriety. In fact, when the Bills Committee was established, many

colleagues had queried why you were the Chairman and asked whether it was because you have to defend and protect the Government. I remember this incident very clearly. And, you have made several members of the Bills Committee unhappy.

The Government has made some moves at the last minute, but will that be helpful and make things easier, will various political parties and groupings find it easier to accept the Bill? I think that the Government has definitely overdone. To put it simply, less is more. As Mr Ronny TONG said earlier, if Secretary Prof Anthony CHEUNG tells us now that there is no undertaking or the Bill will be put to vote on the basis of the proposed clause 63A of the original version of the Blue Bill, I can re-consider my position, though I do not know whether you will have enough votes or not. If the Secretary issues a statement indicating that there will be no undertaking and no negotiations and that a positive vetting approach will be adopted in dealing with clause 63A, then this is something we will accept for this is a solemn legal proceeding which we all recognize.

Secretary Prof Anthony CHEUNG, the other option is that you can postpone the Second Reading of the Bill voluntarily and carefully consider exactly what mechanism is there to make the proposed clause 63A more easily acceptable to the majority of or all of our colleagues.

Some colleagues such as Tony TSE said that the postponement of the Second Reading of the Bill will likely increase uncertainties in the market. We have spent 14 to 15 months, at least 40 to 50 hours on discussing the Bill, and I, as a professional, do not have a lot of free time. However, since the market has already absorbed this message, I think a further period of merely two or three weeks will definitely not affect the so-called market sentiment.

Some colleagues, like Mrs Regina IP, said that Mr Kenneth LEUNG's adjournment motion will likely postpone this matter indefinitely. The word "indefinitely" certainly did not appear in my motion. I have said earlier in my speech that I support the legal intent, direction and specific content of the Bill. I also hope to see that the Bill can be implemented and I would like to find out the response of the market. I studied Economics in university and am absolutely aware that it is very difficult for the market to operate under the current circumstances where there are so many uncertainties. As regards this point, I do not need to be reminded by colleagues for I understand this perfectly.

Secretary Prof Anthony CHEUNG said that he has expressed his goodwill to give Members some leeway so that they can justified themselves to their voters and can thus vote in support of the motion on the Resumption of the Second Reading. President, I am very sorry that this is not the reason why I have moved the motion. Though some people think that I have overplayed my justifications, I have to do so in this incident for we are now talking about our core values, the culture of our Council, the relation between the executive authorities and the legislature, as well as the spirit of the rule of the law, and I must stress these two points.

Mrs Regina IP also said earlier that it was actually very common for an official to make an undertaking in this Council. As to whether we believe in the undertaking, it is our own choice. However, in reviewing the past records, we found that most undertakings made by officials were policy undertakings. We do not know whether those undertakings have been honoured, and it is our personal choice to believe it or not. Some undertakings are on policy measures and this is where the problem lies. Since we now have a Bill with express provisions, what is the point of making this undertaking? Although Mr Paul TSE said the Government can choose not to exercise the powers conferred by the law, what good will it make by saying so?

Let me quote a very simple example. There is a joke or article on the internet on choosing between Set A and Set B in the choice of a wife. If you choose to marry Kay TSE, she will give you \$500,000 and this is Set A; and for Set B, you will get \$500 million in dowry if you marry Hilary TSUI. This is what the Government is doing now. It said it does not matter whether it is Set A or Set B, you should still "stomach it" whichever is the choice. However, this is not true for if I have chosen Kay TSE, I will refuse if I am offered Hilary TSUI.

Under such circumstances, I am not actually very sure what exactly should I vote for. In fact, the simplest way is for Secretary Prof Anthony CHEUNG to say directly that there is no undertaking and everything will be done according to the books, and this is the best way. Of course, there are also Members who have asked the Secretary whether he can undertake to introduce amendments after the passage of the Bill. I do not know exactly how many Members support the negative vetting approach, or how many support that reduction of duty rates would be subject to negative vetting while increase of duty rates would be subject to positive vetting. I have no idea but I believe that the Secretary will have a

very clear idea. It is very unwise to make such a move because of a political decision, and that you want a higher safety factor. It is even more unwise to make these moves four days before the debate on the Bill is held.

Ms Starry LEE said it is perfectly normal for government officials to communicate with Members. This is no doubt perfectly normal and I also spoke to Secretary Prof Anthony CHEUNG last night over the phone to explain my position. In fact, he may not necessarily fail to secure enough votes for passing the Bill even if he does not do anything and just submit the original Bill. I made that very clear for I know the voting intentions of many of my colleagues.

I would also like to thank Abraham SHEK for putting forward many insightful arguments and comments with regard to the Bill. He and his colleagues have strongly criticized the Government and supported my motion which has no legal effect moved at yesterday's Bills Committee meeting. However, I do not understand why today, they do not support my motion to adjourn the debate, so that the Government can get back on the right track and do its job properly to improve the Bill. It remains a mystery to me and perhaps I understand the reason, but Abraham, I am not going to tell you now.

That is all I have to say. I hope that Members will vote on my motion to adjourn the debate in accordance with their conscience on the basis of upholding the spirit of the rule of law, maintaining the dignity of the Legislative Council instead of defending the Government blindly. Thank you, Members.

PRESIDENT (in Cantonese): I now put the question to you and that is: Mr Kenneth LEUNG ...

(Mr Ronny TONG stood up)

PRESIDENT (in Cantonese): Mr Ronny TONG, what is your point?

MR RONNY TONG (in Cantonese): A point of order. Do I need to declare interests? I own properties and I handle legal cases concerning property transactions.

PRESIDENT (in Cantonese): In my opinion, whether Members own properties or not is not related to the motion proposed by Mr Kenneth LEUNG to adjourn the debate.

MR RONNY TONG (in Cantonese): President, when we scrutinized the Bill, the Chairman of the Bills Committee requested us to make declaration of interests every time. As such, I think I should make a declaration to play safe.

PRESIDENT (in Cantonese): If Members consider that they have interests to declare, they can certainly make declarations.

(Mr James TO stood up)

PRESIDENT (in Cantonese): Mr TO, what is your point?

MR JAMES TO (in Cantonese): To play safe, I also declare that I own properties because the Chairman of the Bills Committee requested us to make declaration every time.

(Other Members also indicated their intention to declare interests)

PRESIDENT (in Cantonese): How about I ask those Members who do not wish to declare whether they own properties to raise their hands?

MR PAUL TSE (in Cantonese): President, I think I should make a declaration, not only on the ownership of properties. I have family members who purchased properties during the scrutiny of the Bill. I hope this will not affect my stance and decision.

PRESIDENT (in Cantonese): May I remind Members that on the issue of disclosure of interests, the Rules of Procedure has made different provisions for two situations. The first situation is, if a Member is to speak on a matter in

which he has a pecuniary interest, whether direct or indirect, he shall disclose his interests when he speaks, so that the public may judge for themselves the speech of the Member.

The second situation is during any vote on a question. If Members have to vote upon any question in which he has a direct pecuniary interest, he cannot simply make a declaration and stay for vote. A Member shall not vote upon any question in which he has a direct pecuniary interest.

Now the motion has entered the voting stage. I do not think whether Members own properties, or whether they are involved in legal matters concerning property transactions constitutes any pecuniary interest such that they shall not participate in the voting. Therefore, Members need not declare whether they own properties. Is there any other question?

(No Member indicated further question)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Kenneth LEUNG 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 Kenneth LEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Kenneth LEUNG has claimed a division. The division bell will ring for five minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Albert HO, Mr James TO, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Prof Joseph LEE, Dr LAM Tai-fai, Mr CHEUNG Kwok-che, Mr Frankie YICK, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK, Mr IP Kin-yuen and Mr CHUNG Kwok-pan voted for the motion.

Dr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok and Mr Tony TSE voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr James TIEN, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the motion.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mrs Regina IP, 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, 34 were present, 14 were in favour of the motion and 20 against it; while among the Members returned by geographical constituencies through direct elections, 34 were present, 20 were in favour of the motion and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negated.

PRESIDENT (in Cantonese): In accordance with Rule 40(3) of the Rules of Procedure, Council now continues with the debate on the resumption of Second Reading on the Stamp Duty (Amendment) Bill 2012. During the debate, Members are not allowed to move an adjournment motion again.

MRS REGINA IP (in Cantonese): (*Laughter*) I forget it is my turn to speak and I was about to leave the Chamber for dinner. Oh dear, I forget what I am going to say now. (*Laughter*)

President, as I have already covered a lot of what I have to say when I spoke earlier, (*Laughter*) I will only make a short speech now. As stated before, the reasons why the New People's Party supports this Bill are that property prices has reached a level which the people can hardly afford, and over the past 14 months during which the Legislative Council scrutinized the Bill, we have noticed a downward trend in property prices. In fact, many people (myself included) hope to purchase property at a time when the price is low. Many members of the public have thus told me that they hope that the Bill can be passed quickly, so that those who are uncertain whether they should sell their property can make up their mind to sell their property, and those who want to acquire property can take the opportunity to do so. Therefore, I think this Council should pass the Bill as soon as possible.

Many of my Honourable colleagues have proposed Committee stage amendments (CSAs) and I would give my response. The CSA which I proposed and has been accepted by the Government concerns whether an exemption granted to Hong Kong permanent residents (HKPRs) under the age of 18 would create a legal loophole. I do not agree to Mr Paul TSE's description that I am a "Trojan horse". Before I discussed the question with senior government

officials, some members of the Bills Committee responsible for scrutinizing this Bill had already raised the same question and I believe Mr James TO had also raised this point at an early stage.

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

In one of the meetings, I noticed that the question had been followed up and many colleagues had expressed their views. The Government and Deputy Secretary WONG had maintained their stance for some time, but they later realized that a huge loophole would be created if exemption was granted to HKPRs under the age of 18. Many Mainlanders, including parents of "doubly non-permanent resident children" would take the opportunity to purchase property in Hong Kong. That would be a far bigger loophole than allowing HKPR companies to purchase property. Therefore, I proposed a CSA to remove the exemption and I am glad that it was accepted by the Government. That is what had happened and I am definitely not a "Trojan horse".

We have also considered the other CSAs in detail and some of them are really persuasive. For example, the proposal to exempt charitable institutions from Buyer's Stamp Duty (BSD). We know that there are about 8 000 charitable institutions. Although the number does not exceed 8 000, it is still a large number. On the face of it, there seems to be no reason why charitable institutions should not be exempted from BSD for purchasing properties. But the question is, after making enquiries with the Government, we learn that under section 88 of the Inland Revenue Ordinance, it is only when charitable institutions apply for tax exemptions that the Government will check whether the activities of the institutions are compatible with the nature of charitable services, such as welfare, education and other charitable work. After vetting such application, the Inland Revenue Department will not deploy its staff to monitor or examine the daily work of the institution to see, for example, if it has profited from any commercial transactions. Since no such work is being done at present, the proposal may create a big loophole. In fact, we are aware that some charitable institutions (including church bodies) do engage in property development and some are fighting the Government in court over taxation issues. Therefore, we agree with the Government that although it seems that charitable institutions should be granted exemption, such an initiative will create a big loophole.

The problem of HKPR companies is even greater. I believe my colleagues who are working in the accounting field or who are accountants by profession will know that a HKPR company may have many shareholders which are overseas companies and it is hard to verify who really owns a company. Therefore, after considering various opinions, the Government cannot accept the proposal of granting exemption to HKPR companies and that is a decision we agree to.

On the controversial issue of whether negative vetting should be adopted in amending the bill, as the Secretary said in his earlier speech, that is, the procedure adopted with many Ordinances which provide for charging.

Apart from the examples given by the Secretary — I am certainly not a "Trojan horse" and I have not obtained too much information from the Government — I can also provide some examples. I believe the public will be familiar with what is commonly called "the foreign domestic helpers' levy" (the Employees Retraining Levy). The adjustment of the levy rate is handled by means of subsidiary legislation subject to negative vetting. There are other charges with a special need to adopt the negative vetting procedure, for example, fines imposed by the Court. Under the Criminal Procedure Ordinance (Cap. 221), there are eight levels of fines which the Court can impose. As the rates of fines have to be adjusted with reference to inflation from time to time, the Government makes the adjustments in the form of a schedule subject to negative vetting. That is the negative vetting procedure stipulated by section 34 of the Interpretation and General Clauses Ordinance. In fact, many ordinances are handled in this way.

Regarding the stamp duties in question, I think we should adopt the negative vetting procedure. The reason is that if the Government's proposal of a downward adjustment of the rates has to be scrutinized by the Legislative Council ... After hearing the speeches of many Members, we know that they attach great importance to procedural matters and they are concerned whether Members who are wearing two hats will collude with the Government or tell the press anything which will make other Members unhappy, and so on. When a charging proposal is tabled in the Legislative Council, whether it involves an upward or a downward adjustment, it will at least take two to three months to be scrutinized, given that each Member is so hardworking and serious and attaches so much importance to procedural matters and justice. The result is, although the public is aware that the Government intends to reduce the rates of stamp duties, they are uncertain

whether the Bill will be negated. However, things will be different if the negative vetting procedure is adopted. The Legislative Council will have a maximum of 28 days plus 21 days to scrutinize the proposal. As in the case of the "powdered formula restriction order", the order cannot be amended after the time limit of 28 days plus 21 days. If positive vetting is adopted in determining whether there will be a downward adjustment of the stamp duty rates, not only will the public be very uncertain about the future, the approach will also bring a lot of uncertainties and instability to the market. That will be most inappropriate. Therefore, in handling such kind of bills, I think the Government should adopt the negative vetting procedure.

As a matter of fact, many examples can be found in the laws of Hong Kong. In the case of an emergency measure such as the "powdered formula restriction order" which should be introduced immediately, giving a notice to the public that the order will be implemented three months later will make buyers purchase powdered formula in advance or sellers to raise prices of their own accord. Therefore, negative vetting has to be adopted. Although the order has led to many controversies and accusations of autocracy, it eventually brings the supply of powdered formula back to a normal level and abates nuisance to the residents of the New Territories. This shows that negative vetting can bring about the desired results.

The Government has made an undertaking that any proposal of upward adjustment of the duty rates will be introduced in a bill to be passed in the Legislative Council while negative vetting will be adopted for any proposal of downward adjustment. I think this approach is appropriate. When will the Government reduce the duty rate? Will the Government reduce the rate by 5% from 15% before reducing it further by 10%? I believe nobody, and perhaps not even the Secretary, will have the answer. That is true even if the Secretary has discussed the matter with the Financial Secretary because the answer would depend on market conditions.

When I was discussing with Mr CHUNG Kwok-pan on the Bill this afternoon, he questioned when the Government would know that it should abolish the stamp duties. How would the Government be able to predict accurately when the demand and supply would return to their normal conditions? Is the Government really that shrewd? While I agree to the majority view that government intervention is undesirable, I also believe that if the Government has to abolish the stamp duties urgently, that will be an act to rescue the market. We

do not know when it will be necessary for the Government to rescue the market. Some incidents and crises are rare, just like a black swan, and they will take us by surprise. However, just like the sub-prime mortgage financial crisis in 2008, in retrospect, people considered that there were reasons to it and such crisis might happen. If similar situations arise, such as a collapse of any external market, or some other crises, the Government has to reduce the duty rates quickly, so that the property market will not plummet by 30% and collapse like what happened subsequent to the Asian financial crisis after the reunification. As such, I think the Government should be allowed to reduce the duty rates speedily. Therefore, I consider that we should enable the Government to adopt a mechanism which allows negative vetting.

On the other hand, what are the chances that the Government will increase the stamp duties? I think the chances are slim. The reason is that the current rate of 15% has already caused widespread complaints. Among the complainants are the property-related sectors because nobody wants to buy property anymore. I believe that the Government will not whimsically raise the duty rates to 20% or 30%. In fact, any further increase in the rates will be an indication that there is no collusion between the Government and the business sector, as such a move will ruin the property market, so why would there be any collusion? Property developers do not want any stamp duty in the first place. Any proposal of an increase in the rates will be unpopular because that will be tantamount to asking money from the public. Many Members will then fight for the interests of the public. In that case, it will be appropriate for the Government to table a bill formally in the Legislative Council for scrutiny. Although the Secretary has not discussed the proposal of making an oral undertaking with me beforehand and I only learn about it subsequently, I think it is acceptable.

Why do I think it is acceptable? The reason is that according to an evaluation made by the New People's Party, the public is most eager to see the speedy passage of the Bill, so that certainty and stability in the market will be restored. Prospective buyers and sellers of property will then know what to do and when the market has become certain and stabilized, there will gradually be more transactions for the real estate agency sector. Some real estate agents told me that any fall in property prices does not worry them because people within and outside Hong Kong will buy properties. Having no transaction is their biggest worry. If property prices drop and stabilize at a certain level, many people will buy properties. As long as agreements are signed, such a situation will be

welcomed by the real estate agents. I believe that the smart property developers would have already made adjustments to the market conditions over the past 10 months. Therefore, I consider it necessary for the Bill to be passed without delay so that certainty and stability can be restored in the market.

Deputy President, I support the resumption of the Second Reading on the Bill.

MR MARTIN LIAO (in Cantonese): Deputy President, over the past few years, under the promotion of the quantitative easing policies in foreign countries, there has been a massive influx of foreign capital, coupled with exceptionally low interest rates, a tight supply of residential properties and a shortage of investment outlets, resulting in spiralling property prices and an exuberant property market in Hong Kong. The situation has become a cause for public concern. Meanwhile, various research institutes, such as *The Economist* and Demographia, have unanimously pointed out that Hong Kong has the highest risk of a property bubble with property prices deviating from economic fundamentals; in the event of any changes in interest rates or other external factors, the adjustments arising therefrom may have a huge impact on our property market and financial institutions, and take a heavy toll on society. However, what bothers the public the most is that property prices have soared beyond the affordability of most aspiring home owners in the community, and the so-called "housing ladder" is forever something that is within sight but beyond reach. I find this unacceptable. The Government and the community are extremely concerned about this extraordinary phenomenon. Given that the Hong Kong dollar (HKD) is pegged to the United States dollar (USD), some macroeconomic adjustment measures (such as interest rate adjustments) cannot be adopted indiscriminately. The Government can only tackle the problem by managing demand, increasing supply and raising personal incomes. It is hoped that in the long run, there will be a reasonable and healthy ratio of property prices to people's incomes. As the objectives of increasing housing supply and raising personal incomes cannot be achieved in the short term, any short-term measures are bound to be taken on the front of managing demand.

Regarding the legislative amendments proposed by the Government to introduce the Buyer's Stamp Duty (BSD) and increase the rates of the Special Stamp Duty (SSD), commonly known as the "double curbs" measures for the property market, their purposes are to achieve the effect of suppressing soaring

property prices in the short term by way of managing demand. Unless there is a serious imbalance in market operations and there is no alternative, I do not approve of any means to interfere with free market operations. Also, in my view, the "double curbs" measures are only "steroids" used to cool down the property market and they have side-effects; nonetheless, it is undeniable that certain serious illnesses do need to be treated with "steroids", which can alleviate the symptoms and prevent the conditions from deteriorating to an incurable state.

In fact, since the announcement of the "double curbs" measures, they have indeed served their intended purposes on the property market. According to the figures from the Rating and Valuation Department, overall property prices rose 24% during the first 10 months of 2012, but since the Government announced the launch of the "double curbs" measures in October 2012, the average monthly increase in private residential property prices dropped significantly to 2.7% in the first two months of 2013. Subsequently, after the Government rolled out a new "curb" measure in February 2013 to double the *ad valorem* stamp duty rates on all properties, that is, the Double Stamp Duty (DSD) measure, the average monthly increase in residential property prices tapered off between March and December 2013 to 0.2%. As for the prices of small units, in which the rate of increase used to be relatively high, the annual growth shrunk considerably from 30.2% in 2012 to 8.7% in 2013. All these show that the "double curbs" measures have really produced a cooling effect on the property market and substantially slowed down the rising trend.

Therefore, I concur with the Government that the "double curbs" measures are "extraordinary measures introduced under exceptional circumstances". With this taken into consideration, I support the Government in introducing the "double curbs" measures concerning stamp duty in these exceptional circumstances.

Deputy President, while the "double curbs" measures have the effect of suppressing market demand and the rise in property prices, we must bear in mind at the same time that Hong Kong, as an open economy, is subject to the influence of external economic uncertainties such as capital flows, interest rates and other economic factors. In view of this, coupled with the HKD-USD exchange rate link and the extremely volatile and ever-changing external economic environment at present, Hong Kong's property market is vulnerable to sudden fluctuations and changes. I thus take the view that it is necessary for the legislative amendments in question to equip the Government with a quick-response mechanism, whereby it may swiftly respond to market changes in future by adjusting the duty rates or

scrapping the duty, with a view to stabilizing the property market. Therefore, I support that as and when the Government adjusts such duty rates in future, the adjustments should take immediate effect.

Deputy President, as regards the amendment proposed by me, its objective is to support the Government's proposal by making it more comprehensive and fairer and minimizing its impact on the taxation system. My amendment retains the original intent of the Government's Bill, as well as its intended purposes and effects, and adopts the wording of the Government's Bill. Having said that, the following three conditions must be met:

First, my amendment retains the negative vetting mechanism which allows the Financial Secretary to make a decision to alter the duty rates with immediate effect, but requires the Financial Secretary to submit such a decision, by way of a motion, to the Legislative Council afterwards for scrutiny and approval.

In the case of general administrative or non-taxation measures, I have no objection to their implementation through negative vetting. Yet, when it comes to dealing with taxation matters through negative vetting, I reckon that this will have far-reaching implications for the taxation system and should be handled with caution.

Deputy President, in most advanced countries and regions around the world, taxation shall be directly approved or rejected by the local legislature as an integral part of monitoring the administration, and the executive authorities have no discretion to tax arbitrarily. This is virtually a constitutional taxation principle generally adopted and observed worldwide. This principle is also recognized by Article 64 and Article 73 of the Basic Law, which stipulate that the SAR Government shall obtain approval from the Legislative Council for taxation, and that the powers and functions exercised by the Legislative Council of Hong Kong shall include approving taxation. As to whether taxation through negative vetting is consistent with the Basic Law, due to time constraints, I do not intend to debate this point here as different people may have different views. That said, I think there is a conflict between negative vetting and the aforesaid taxation principle, because taxation through negative vetting takes effect without having to be approved by the Legislative Council. If this Council is to oppose that, it has to move a motion on its own initiative. This is inconsistent with the general practice of the legislature directly approving or rejecting government taxation bills.

In this regard, basically there is no big difference between my amendment and the Government's amendment. The only difference is: should this Council move a motion to oppose taxation, or should the Financial Secretary move a motion to levy tax to be scrutinized by this Council?

Some people have asked why I suggest requiring the Financial Secretary to propose his amendments by way of a motion instead of a bill, which is the normal practice. The reason is that if such amendments are proposed by way of a motion, each Member can only speak on it once for up to 15 minutes, hence leaving little room for filibustering.

Some people have queried whether the six-month period would bring forth even more speculative activities resulting in chaos. In my opinion, regardless of whether taxation is effected through negative vetting or positive vetting, it may ultimately be vetoed, passed or amended in this Council, and no one can be sure about the final result in advance. As the Basic Law stipulates that any taxation is subject to the approval of the Legislative Council, this uncertainty exists no matter which proposal is adopted, be it the Government's bill or my amendment. It is impossible to eradicate all speculative activities. The difference may be just a matter of degree, the influence of which is open to interpretation and is not assessable. If someone claims that the proposal in the Government's bill can eradicate speculation or chaos, I am happy to listen to his arguments in detail.

Now, Secretary Prof Anthony CHEUNG has given an undertaking in this Council: Where the duty rates are to be increased, the Government will, after the Financial Secretary has increased the rates by notice published in the Gazette, submit his decision to increase the rates by way of a bill to this Council for scrutiny and approval. If my understanding is correct, this is exactly in line with the intent of my amendment. I welcome the Government's undertaking, which is perfectly compatible with the mechanism proposed in my amendment. Where the duty rates are to be reduced, the Government will stick to the proposal in its Bill, that is, to effect such reductions through negative vetting. As increases in the duty rates would be more controversial and have a greater social impact than reductions in duty rates, and the impact of such reductions on the taxation principle would be relatively small, it is very unlikely that this Council would oppose such reductions. I consider these arrangements acceptable. Since the Government can no longer revise the Bill, this modified practice of increasing the rates has been proposed in the form of a government undertaking, which is an undertaking of self-restraint on the part of the Government, and I consider it

acceptable. I believe that this is a solemn undertaking from the Government to this Council and the community as a whole, and it will be honoured and will generate reasonable expectations in society. I welcome this undertaking given by the Secretary. I do not agree with some members of the community who say that the Government has "knelt down" in its latest stance. As I see it, this whole process is the embodiment of interaction and collaboration between the executive authorities and the legislature in serving the public and safeguarding the interests of society in their respective positions.

The second point of my amendment is on formulating a refund mechanism. If, in the end, the proposal in the Government's Bill is passed so that any increase in the duty rates shall be effected through negative vetting, the stamp duty paid after the new rates come into force shall go to the Government's coffers within 30 days of the completion of trading. However, in the event that the new rates are ultimately rejected by this Council, the Government's amendment does not provide a mechanism or legal basis for refunding any stamp duty paid in excess to the payers, and this is unfair to them. To address this issue, my amendment provides a legal basis for refunding, which is a fairer approach in my view. If my amendment is passed, this will become a statutory refund mechanism.

Deputy President, according to the Basic Law, the Financial Secretary has no power to levy tax. Even if the Financial Secretary decides to increase the duty rates by notice published in the Gazette, this is still subject to the requirement of Article 64 of the Basic Law, which stipulates that approval from the Legislative Council shall be obtained for taxation, no matter whether it is by negative vetting or positive vetting. If the Financial Secretary's decision is not passed by this Council in the end, then from a practical perspective, the duty paid by members of the public at the increased rates gazetted were actually paid according to the Financial Secretary's administrative decision, and so should be refunded.

The third point is on formulating a top-up mechanism. By the same token, if the Financial Secretary decides to reduce the duty rates but this decision is ultimately rejected by this Council, the stamp duty payers shall have the statutory obligation to pay the difference in duty. Thus, for fairness' sake, while this is an unlikely scenario, my amendment also provides a top-up mechanism to safeguard the Government's revenue. If my amendment is passed, this will become a statutory top-up mechanism.

Deputy President, as I am running out of time now, I will elaborate further on the provisions in my amendment in the Committee stage.

I also wish to reiterate here that I have never had any prior communication with the Government on my amendment, nor have I involved the Government in coming up with it. So, I am not "half a Trojan horse" as mentioned by Mr Paul TSE. I am sorry that Mr Paul TSE feels uncomfortable with my amendment, but this uncomfortable feeling is of his own making.

Deputy President, I so submit.

DR KWOK KA-KI (in Cantonese): Deputy President, I remember that the property market was exuberant when the Government introduced the Buyer's Stamp Duty (BSD) and the Special Stamp Duty (SSD), and it was pleased to see the response of the market at that time.

However, we are disappointed that the supply of flats has not obviously increased in the past six months after the introduction of these measures, and the prices of residential flats have not lowered substantially as expected by the Government. As reflected by the Centa-City Leading Index provided by developers, the property prices has only been lowered slightly. For most grass-roots and middle-class people who cannot afford to buy flats, stamp duty is actually a pain killer with transient effects. The Government has repeatedly mentioned that it will increase the supply of flats through various measures, such as increasing the land supply, combating speculation, enhancing the transparency of property transactions, and preventing excessive mortgage lending expansion. I believe the last measure of preventing excessive mortgage lending expansion is not effective. Even if the Monetary Authority increases the down payment from the original 30% to 50%, we do not see any deterrent effect, especially on those investors with sufficient funds who will buy expensive flats. The most effective way is to alleviate the unbalanced supply and demand in the market through land supply, the provision of housing and the construction of subsidized housing by the Government.

Nevertheless, I think most people will be disappointed at the policy address of last year and this year. Since the new-term Government has taken office, less than 10 000 new flats were supplied last year and only 16 800 flats will be supplied in the next few years, even less than the 20 000 flats as promised by the

last-term Government and the Donald TSANG Government which had been constantly denounced by us. Under such circumstances, can the newly introduced BSD and SSD really help most people in home purchase? There are doubts about that.

Members, including those from the business sector, have vigorously criticized the Government's intervention in free trade or the free economy, as this caused uncertainties in the market, such that people who wish to buy flats or small owners who wish to rent out their flats for meagre incomes are facing grave uncertainties. Deputy President, the biggest problem is not the Government's introduction of the taxation system, as the system has already been introduced. The problem is when the Government will withdraw. Our greatest worry is the Government's making of an oral undertaking at this final stage, that is, should the "curb" measures be exempted or an reduced of the duty rates be introduced, vetting by the Legislative Council is not required, but a lengthy vetting process is required if the duty rates will be increased. Take this case as an example, it may take at least six months before the passage of a bill. The Government has now taken the initiative to take away the consistency as required in administration. Why should a reduction of the duty rates be effected immediately while an increase in the rates has to go through a lengthy process? Is this fair? This is exact the reason why many Members have commented earlier that the Government's proposal is absolutely unfair. The Government should respond to this.

Let us take a look at the overall property prices. The current prices are more than doubled the prices in 2008 and nearly 26% higher than the prices in 1997. If the supply of flats is not increased further, the sustained implementation of these stamp duties will not be effective. It is not difficult for us to notice that there is a lack of suitable co-ordination among different Policy Bureaux. For example, as we have recently observed, information provided by the Development Bureau on the supply of land for new buildings still fails to meet the public's keen expectation of additional supply of private or public residential units. If the Government only wishes to rely on the transient pain killer to solve this serious problem, I think it is taking the easy way out but to no avail.

We believe these special administrative measures of SSD or BSD will only perform the functions of a gate, and the final solution relies on the active provision of land and housing by the Government. As we all know,

market-makers in Hong Kong include the Government and some major developers. The fact that even Mr Abraham SHEK representing the real estate sector does not oppose the adjournment motion gives me a feeling that developers have well-thought-out plans, they have enough ammunition or weapons to counteract the impacts of the BSD imposed by the Government as they are in control of the supply of units and their prices. How confident is the Government in implementing these new measures?

(THE PRESIDENT resumed the Chair)

President, I wonder if you have recently noticed that if developers want to sell first-hand units to some buyers, including Mainland buyers, they would shrewdly sell these units at preferential prices and then refund to buyers the SSD or BSD. Being wealthy and influential, developers can directly manipulate the market. However, the Government has not taken any actions. Given the current supply of land and housing, the Government has still been acting slowly to handle the issues. The tender for the MTR development on Tin Wing Road in Tin Shui Wai has failed to get any application for more than once, and the Government may wish to turn the site for building Home Ownership Scheme flats. Apart from Paul CHAN's comments made a month ago, I still fail to see any specific measures or steps taken by the authorities that can sufficiently deal with these developers' practices of collusion in not bidding or in setting lower prices, so that no units are available to meet market demand.

Certainly, this Bill concerning the measures on stamp duties ...

(Mr James TO stood up)

PRESIDENT (in Cantonese): Dr KWOK, please hold on. Mr James TO, what is your point?

MR JAMES TO (in Cantonese): President, there are now only four Members in the Chamber.

PRESIDENT (in Cantonese): Are you requesting a headcount?

MR JAMES TO (in Cantonese): Yes. I am worried that many Honourable colleagues are having dinner after they have spoken and they do not know there are only a few Members in the Chamber, or they may think that the meeting has been suspended. They may wish to return to the Chamber ...

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

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

PRESIDENT (in Cantonese): Dr KWOK Ka-ki, please continue.

DR KWOK KA-KI (in Cantonese): President, the Government's approach is not perfectly sound. We note that when the Government proposed these new duties, a lot of investors have changed their targets to non-residential properties, including offices, factories, shops and parking spaces, which will not be used by the investors. So, the prices and rents of parking spaces in many housing estates are rising. For young people who wish to start a business, they may not even be able to rent a unit in a factory building. For some shops which have been in operation for dozens of years, they have to close down. Today, we have just heard that a knife shop which has been in operation for 50 years has announced its closure. This shop has been operating for dozens of years with no problem in business operation, but sadly, due to rental increase, it has to close down.

If the Government thought that the "double curbs" measures can solve our problems, I am sorry to say that they can only solve part of the problem. If the Government is really determined to suppress some unreasonable or unnecessary speculative activities, why does it not specify that SSD and BSD are also applicable to all non-residential properties that are closely connected with people's livelihood? What are the justifications? Does the Government think that, as long as the grassroots have a place to live, it can ignore the constant price increases in respect of clothing, food, accommodation and transportation? The

Government certainly needs to increase the supply of different types of properties, including non-residential properties, but a choice has to be made in respect of land use. If more land is used for the construction of non-residential units, there will be less land for housing construction. This is the statement often made by Paul CHAN. The current practice of the Government may be effective, but on the other hand, it will create a situation that is unwelcomed by the general public, that is, the rents and prices of shops, offices, and parking spaces, and so on will be soaring.

Furthermore, as the Government has hastily introduced the proposals on stamp duties, it is caught in a dilemma. As we noticed at the Bills Committee meetings these few months, there are many important loopholes in the Bill which render it necessary for Members to propose amendments or to ultimately force the Government to propose amendments. Such loopholes include the issues of buyers who are minors under 18 years of age, as well as properties affected by redevelopment. Evidently, the policies on increasing or reducing the duty rates require lengthy deliberations and reasonable discussions. Therefore, the Government's proposal of "reducing the rates quickly but increasing the rates slowly" is illogical. Yet, we all know that the Government has to do so for political reasons, and this is regrettable. The authorities have yet to deal with many amendments that are worth considering, including an Honourable colleague's proposal on providing exemptions to charitable institutions. The Government has still not officially agreed or formally responded.

Second, we also need to discuss how long the demand-side management measures should be implemented. If they are only short-term measures, they are indeed feasible, but what if they are long-term measures? Are they feasible? We fail to see any reassuring arrangement under the Government's new long-term housing policy for the supply of residential and non-residential properties in the next 10 years. What we have observed is that within a long period of time in the future, there will still be a serious shortage of residential, commercial or other properties. We must consider that these demand-side management measures may have to be implemented for long, and another issue will arise be derived is whether the Government has made good use of these duties? If the Government wants to achieve the objectives through economic consideration, why does it not impose more effective duties such as capital gains tax? The same kind of tax can be imposed on all properties including residential and non-residential properties. Will the imposition of capital gains tax solve the problem that we have just mentioned? That is, speculators will immediately change their targets

and inject funds into property investment, which will similarly affect people's livelihood. If the Government has a long-term perspective and finds it necessary to control or deal with speculation through financial incentives and sanctions, so as to control the rents and prices of residential or non-residential units, it must reconsider the introduction of capital gains tax.

President, after all, we will not strongly oppose all these duties but we doubt whether these can effectively solve (*The buzzer sounded*) ... many problems that Hong Kong people can foresee ...

PRESIDENT (in Cantonese): Dr KWOK, your speaking time is up.

DR KWOK KA-KI (in Cantonese): I so submit. Thank you, President.

MR ANDREW LEUNG (in Cantonese): President, home ownership is an important cornerstone to maintaining social stability and promoting upward social mobility. The Chief Executive and some officials have explicitly stated that bringing the property market back to health is an important task of the Government. When this Bill was introduced by the Government in October 2012, the Chief Executive and the officials concerned emphasized that the Bill had three objectives. First, to further curb speculative activities, cool off the overheated residential property market and accord priority to Hong Kong permanent resident (HKPR) buyers in the midst of the tight supply situation. The Business and Professionals Alliance for Hong Kong (BPA) and I agree that these objectives should be achieved, but we have reservations about achieving these objectives through measures that will distort the market.

The BPA thinks that the Government should not simply rely on measures to curb speculative activities and bring down property prices, as this will just cure the symptoms but not the disease. On the contrary, the Government should solve our housing problems by increasing supply so that there is sufficient and stable land supply in the market. We have always been proud of the free market and the free flow of capital and talent is the cornerstone that Hong Kong as an international financial and trade centre is built upon. In 2012, the current-term Government increased the Special Stamp Duty (SSD) and extended the coverage period of the enhanced SSD from 24 months to 36 months. It also introduced a

"curb" measure of a 15% Buyer's Stamp Duty (BSD) on residential properties acquired by any person other than a HKPR, hence, some people and even those acquiring residential properties in the name of a company are subject to higher duty rates. The BPA thinks that the Government has violated the principles of the free market and has roughly intervened in the market and our economy.

The Government has repeatedly stressed that the "curb" measures are just extraordinary measures taken at extraordinary times, and the SAR Government is taking special measures for special problems, with the intention of according priority to meeting the home ownership needs of HKPR at a time when there is a tight residential properties supply, exceptionally low interest rates and ample capital, causing the exuberant state of the property market. We understand and hope that the relevant policies and measures can stabilize the overheated property market, and a lot of people even hope that the Government could bring down property prices to reasonable and affordable levels. Therefore, when the Government introduced the measures, we have stated the principle that these measures should be on short-term basis.

During the deliberation of the Bills Committee, we kept asking the Government of the objective criteria used to assess when these extraordinary measures should be withdrawn. The officials repeated time and again that adjustments to the "curb" measures should be made by reference to a basket of indicators, including property prices, the housing affordability for the general public, the volume of property transactions, the supply of residential properties, mortgage payments, rent-to-income ratio, and so on. Their remarks were ambiguous and unconstructive.

What baffles us is that even the Federal Reserve Board in the United States has objective criteria for exit mechanisms, why Hong Kong does not have any criteria for the revocation of the "curb" measures. When some Members wanted the Government to consider introducing sunset clauses, the Government seemed defying, which made us question how long these extraordinary measures taken at extraordinary times would remain effective.

The officials have told us that the objectives of the SSD and "curb" measures are not to increase the tax revenue, as the Government also wishes to suppress demand through increasing the duty rates. The figures provided by the authorities also showed that, by the end of 2012, there were a total of 1 836 cases where SSD was paid, involving less than \$330 million. Nearly 80% of these

transactions involved the buying and selling of properties within a year or two. On average, there is an additional payment \$165,000 in each case for stamp duty. Therefore, the Government has proposed to extend the original two-year period to three years. If many people sell their flats two to three years after purchase, will the authorities respond strongly and consider extending the period to four or five years?

Let us take a closer look at the effectiveness of the measures. Since the implementation of SSD by the last-term Government in 2011, short-term transactions have reduced but the property prices are rising but not falling. In particular, the rate of increase in the prices of more affordable flats is even higher than that of luxurious residential units, and new developments of developers are popular among buyers because they do not need to pay SSD. Hence, the measures taken by the Government are advantageous to developers but people who want to upgrade their homes would suffer.

President, since more than 1 million households in Hong Kong own residential properties, any factors contributing to uncertainties in the property market and the Government's excessive intervention may cause property prices to fall sharply, affecting more than 1 million homeowners in Hong Kong. These properties may become negative equity at any time, and the public grievances so aroused will go beyond the grievances of those who fail to buy flats. This is of immediate concern to Hong Kong people. As I have mentioned many times in the Bills Committee, some people committed suicide by burning charcoal because of negative equity but nobody committed suicide by burning charcoal because of the failure to buy flats.

A number of Honourable colleagues having a business background and I have constantly asked the Government, as BSD targeted foreign capital, with the intention of increasing the purchasing costs of residential properties of non-Hong Kong buyers, so as to curb rising property prices; why do Hong Kong people acquiring residential properties in the name of a company are also required by the Government to pay an additional 15% rates? The Government said that there are many loopholes in exempting people acquiring residential properties in the name of a company from paying BSD, and it is difficult to implement. At present, the measures have seriously affected the interests of Hong Kong people and the normal operation of local companies, the Government thus should not only adopt a rigorous and across-the-board attitude. It will disregard the legitimate rights of individuals and companies acquiring properties not for

speculation but for a genuine need for self-occupation. The Government has ignored the side effects of these measures and the opposition from different stakeholders. The measures to suppress demand are intended to curb speculative activities, they should definitely not be turned into long-term measures taken by the Government to intervene in the market and violate the principles of the free market principles. The special measure for special problems should not be turned into a long-term measure for special problems.

To amend the imperfect Bill, the BPA proposed two Committee stage amendments (CSAs), to set things right and rectify the impacts of SSD and BSD so that they can perform their due functions. We propose that company directors should make a declaration with legal liabilities but the authorities have refused to accept that. We also propose a CSA to add a sunset clause to stipulate 26 October 2015 as the expiry dates (three years after the introduction of such tax). The CSA will later be proposed by the Chairman of the Bills Committee on behalf of the Bills Committee. This proposal is made after careful consideration and the short-term nature of SSD and BSD has been clarified, and it also enables the SAR Government and the Legislative Council to respond to future changes in the economic environment more flexibly. More importantly, the sunset clause does not rule out the possibility of continuing to implement or modify the stamp duties; if necessary, the Government can still make the proposals by introducing a bill into the Legislative Council for discussion.

President, the demand-side management measures only intend to suppress demand, so as to try to solve the difficulties faced by Hong Kong people in home acquisition. Yet, we know very well that there are supply and demand problems in the property market. Even if the Government can suppress demand for a short period of time, when the measures are slightly relaxed or when the value of Hong Kong dollar is weakened along with the weakening of the US dollar, capital will flow into the property market and push up the property prices. To really solve the problem, we must start with the supply and construct more non-luxurious units for small families. The Government announced earlier that it would allocate more than 150 sites for the construction of residential units. I absolutely agree that dealing with the supply of land first is a good approach. Nonetheless, I hope the authorities would give up the granting of land to the highest bidder, and adopt some new ideas in granting the land. For example, it can make reference to the arrangements for HOS flats and prescribe certain conditions; for instance, the buyers can only be Hong Kong people or further

restrictions be imposed that the flats can only be resold to Hong Kong people. It should take the lead to considerably reduce the floor price such that the per-square-foot price of flats can be lowered substantially.

In addition to dealing with the flour costs, the Government should think of ways to reduce the construction costs. At present, the per-square-foot construction cost is about \$4,000 while the same in Singapore is some \$1,000, which is only one third of the cost in Hong Kong. The daily wage of a local construction worker is at least more than \$1,000 while the daily wage in Singapore is just one tenth, because there are sufficient foreign workers for low-skilled work. Moreover, the shortage of local construction workers extended the construction period, which directly increased the costs. As more infrastructural projects will be commenced in future, more workers will be needed. Can the Government relax the restrictions on the importation of foreign labour in order to speed up housing construction, stabilize the annual supply of residential properties, and further narrow the gap between supply and demand, so that property prices will be reduced to such levels that Hong Kong people can afford?

President, the "curb" measures are indeed very tough for Hong Kong people but we have only noticed a significant reduction in the number of transactions. There are few cases of buying or selling of second-hand properties and young people who wish to buy more affordable flats have still failed to do so. Owners who wish to upgrade their homes can only wait as because nobody is interested in buying their flats. These effects are clearly very different from the authorities' expectation of giving priority to the home ownership needs of Hong Kong people. Should we support an ineffective bill that would distort normal market operation without any changes? This is worth pondering by all Members present.

I so submit.

MR SIN CHUNG-KAI (in Cantonese): President, first I would like to take this chance to clearly state the Democratic Party's voting intention and preference. I speak in support of the resumption of the Second Reading of the Stamp Duty (Amendment) Bill 2012 mainly because we think that it is necessary to introduce certain demand-side management measures to interfere or control the property market as the property price has risen to a level unacceptable to the people of

Hong Kong over a period in the past. However, this does not necessarily mean that we will support the Government in the Third Reading. Mr James TO of the Democratic Party has proposed a series of amendments. I understand that Mr Martin LIAO has also proposed some amendments. We will support their amendments. How we will vote in the Third Reading depends on what amendments will be passed at the Committee stage. If the amendments of Mr James TO or Mr Martin LIAO are passed, there is a good chance that we will support the Third Reading, but if the amendments of Mr Martin LIAO and Mr James TO are all negated, we may oppose the Third Reading.

President, I still recall that about 10 or 11 years ago during the outbreak of the SARS epidemic, the property market of Hong Kong hit the bottom. From 1992 to 1997 or 1998, the property market was at a peak. After 1997, the Asia financial crisis broke out in 1998, followed by a string of economic recessions and then the outbreak of SARS, the property market in Hong Kong was badly hit. I remember at the worst time, there were over 100 000 owners of negative equity assets. After Donald TSANG took office as the Chief Executive, Michael SUEN launched "SUEN's nine strokes" to stimulate the property market. Thanks to him, the property market picked up from the trough to reach the peak in 2013. With the property market jumping from the trough to the present peak in just 10 years, the cycle is rather short.

Hong Kong is a tiny place. Its property market is highly susceptible to the impact of overseas investments, which push our property market to an exuberant state. Looking back, the series of measures taken after 2003 were to clear certain obstacles. Among the "SUEN's nine strokes", there were some measures to stimulate the property market and some to stimulate the economy, such as the introduction of the investment immigration schemes, which boosted the demand. After a decade, more and more Mainlanders have been influencing the local property market. Statistics show that from 2009 to 2012, the percentage of Mainlanders purchasing properties in Hong Kong continued to rise. Although Mainlanders buyers have yet to be the majority, their investment volume was enough to push the property market to an exuberant state. The Government has also taken some measures, such as taking out the purchase of properties as an investment item required for investment immigrants, so as to reduce the demand.

However, the quantitative easing policy implemented by the United States after the Lehman Brothers incident in 2008 further eased the cash flow and as a result, property prices in Hong Kong as well as in all places over the world had

been pushed up. To go even further, we can trace back to the September 11 incident. After the incident, the United States implemented the low interest rate policy to boost the economy and since the Hong Kong dollar was pegged to the US dollar, Hong Kong had to lower the interest rate and entered a long period dominated by low interest rate. Of course, besides the Asia financial turmoil, Hong Kong also faced another problem in 2003. However, after 2008, the low interest rate coupled with the quantitative easing policies seriously impacted the property market. Many people invested in properties, coupled with the Mainlanders' entry into the property market, the demand for housing in Hong Kong rose, making property prices out of reach of many local residents.

President, the Democratic Party supports the Government's introduction of certain economic or taxation measures to manage or interfere with the property market. Is it against the principle of free market? Of course it is, as a free market should be governed by demand. However, given that Hong Kong is unable to increase land and housing supply within a short time to meet the market demand, it is necessary to employ other measures as a stopgap. The authorities should consider this point.

Hong Kong is a relatively small market with a population of over 7 million. When compared to the Mainland or the international community, Hong Kong has its own strengths and can thus attract many local or international buyers, including those from the Mainland, to invest in property in Hong Kong. Hence, the current property market in Hong Kong is no longer a market for its own people. Other than local residents, people from the Mainland and the international community are also interested in purchasing properties in Hong Kong. Therefore, some measures have been taken as a matter of expediency, like the Special Stamp Duty for all non-Hong Kong permanent residents, but when the supply of housing increases, this may well be one of the measures to be withdrawn eventually, to be replaced by other relatively fairer measures.

For example, when the interest rate rises or the demand declines, the Government may have to lower the duty rates in phases. However, we must not forget that there may be new comers to the market when the rate is lowered. When the interest rate rises, there will be fewer property buyers but a lower stamp duty rate may attract new demand. Therefore, when should we start to lower the rate? The Bills Committee — I am not a member of the Bills Committee on the Stamp Duty (Amendment) Bill 2012, but I am a member of the Bills Committee on the Stamp Duty (Amendment) Bill 2013 — also asked the Government

whether it should draw up some indicators to determine the circumstances under which the duty rates should be reduced, or in jargon terms, whether a formula should be set to initiate the reduction of the duty rates.

The Federal Reserve of the United States holds meetings every month to discuss the interest rate, the result of which will be made public about a month later. No matter it was the past Chairman, Ben BERNANKE, or the incumbent Chairwoman Janet YELLEN, they all make it very clear about their tapering mechanism, that is, the measure about how to reduce the bond purchase when the interest rate rises. The Government should disclose more information to the market concerning the basis on which the Government will in future reduce the duty rates of the "curb" measures passed today, such as to what extent the property price has fallen before the duty rates will be reduced, whether the reduction will be implemented in phases or in one go, and how the reduction will be effected. The Government should make that clear to the public.

President, the demand-side management through taxation measures is one of the means adopted mainly to suppress the demand. To solve the problem at root, we must consider increasing the supply. However, other than taxation, the authorities should also consider other demand-side management measures. When Chief Secretary Mrs Carrie LAM attended the House Committee meeting the other day to discuss the Steering Committee on Population Policy, I asked her whether we still needed so many investment immigrants given the many problems facing Hong Kong, especially the housing problems, and that Hong Kong's current economic growth among the Four Asian Dragons was still relatively good though not as robust as Singapore, as the Financial Secretary put it. Can we cut down the number of investment immigrants? Although under the current Investment Entrant Scheme, the amount spent on the purchase of property cannot be counted as part of the investment required, these immigrants may also invest in the property market after coming to Hong Kong, which will in turn increase the demand. Will the Government also consider that?

Moreover, under the present situation in Hong Kong, should we also review the Quality Migrant Admission Scheme and the like? At the abovementioned meeting, Chief Secretary Mrs Carrie LAM replied that the series of measures could not compensate the turnover of our talents. However, on the whole, as Hong Kong is facing much pressure, people also have certain aspirations in this respect, should we also give some thoughts to that?

Following the Lehman Brothers incident, property prices fell about 20% from 2008 to 2009, but they began to pick up and continued to rise from 2009 to 2013 and up till today. In fact, the property market has now reached an exuberant state. The Government first imposed the double stamp duty, to be followed by the present "double curbs" measures, and another measure in 2013, I wonder if they have become a "four-ingredient tea" now. The Government has indeed imposed a number of "curb" measures. However, it is easy to introduce these "curb" measures, but not so to withdraw them. I have already raised the question and I hope the Secretary will tell us when the Second Reading of the Bill is resumed whether there are any objective criteria to determine when the duty rates will be reduced, and how the "curb" measures will be withdrawn. Will they be withdrawn gradually or in phases? Which measure will be withdrawn first?

These measures are effective today but what will the situation be like a few years from now? I hope that the Secretary will give us some information for reference. I do not know if the Secretary will withdraw the "curb" measures while he is in office as there are still three and a half years left in his tenure. Will the next-term Government have different considerations? Will he leave some footprints behind for us to make reference to?

After what is said and done, the only solution is to increase the supply. I think the Government has racked its brains to find ways to increase the supply, including urban renewal, land reclamation, development of the Northeast New Territories, and improvement to the use of land. Mr WU Chi-wai of the Democratic Party is also very concerned about this problem. A few months ago, he moved a motion debate on the development of "brownfield sites". The Government has also mentioned in the Policy Address the redevelopment of old public housing estates that are worth redeveloping. The Democratic Party welcomes them. We hope that the Government will, during the discussion on the increase of housing supply, properly address the difficulties encountered in its implementation, especially the opposition from local residents.

President, the "double curbs" measures have their merits but there are side effects. I have received many residents' emails complaining that after the imposition of the "double curbs" measures, they were unable to sell their flats. They have personal or other reasons to sell their flats but as Mr Andrew LEUNG said just now, the number of transactions plunged after the "double curbs" measures were implemented. There are of course many causes for that. It may

be that people are expecting that property prices will fall this year and they want to buy properties at the lowest price and hence, everyone adopts a wait-and-see attitude even before property prices start to fall. However, for those who have real needs to sell the old flat to buy a new one or those who need to sell their flats for some needs, such as to get cash for other pursuits, and so on, they are unable to sell their flats I have received many emails complaining about this side effect which has plagued them.

Lastly, President, the property market is not easy to manage effectively, even for such a huge market as the United States. I have mentioned just now the subprime mortgage crises in the United States were also caused by the property market. After the September 11 incident, the United States started to stimulate the economy by launching a series of low interest measures to encourage people to buy properties. Some companies employed financial tricks to launch many subprime mortgage products and these products led to the economic downturn in 2007 and the occurrence of the Lehman Brothers incident in 2008, which subsequently created a huge international crisis.

The Government must proceed with the market control measures with great caution. The property market jumped from the trough rife with negative equity assets to the present exuberance in just 10 years. Will this trend reverse? I hope that the Government will handle the property market very prudently.

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

MR ABRAHAM SHEK: President, the Secretary should be walking on air, as the Stamp Duty (Amendment) Bill 2012 (the Bill) will be passed without delay. But even if the Government wins this battle by Saturday, it will be a sad victory — Hong Kong will pay dearly in terms of the consequences of a poorly drafted Bill; the relationship between the Legislative Council and the Executive Council will further degenerate, with an increasingly arrogant Government; the business environment will be adversely impacted, affecting normal market operations as well as Hong Kong's reputation as one of the world's freest economies; and there will be lasting damage to our long-cherished rule of law due to the abuse of the negative vetting procedure, as we have discussed earlier.

A former United States President said, "Government is not the solution to our problem. Government is the problem"; "Government's first duty is to protect the people, not run their lives"; "Government exists to protect us from each other. Where Government has gone beyond its limits is in deciding to protect us from ourselves." I could not agree more. First, the Government's tough measures, including the BSD, are not the solution to our housing woes. The Government is the problem for failing to boost flat supply, it then puts the blame on the market and controls the demand. Second, while the Government's first duty is to protect the people's interest, the Government is running into people's lives by discriminating against them — the Hong Kong Permanent Residents (HKPR)-owned companies and the minors of 18 years old and under. Third, the Government has gone beyond its limits by deciding to protect us from ourselves through its abuse of the earlier discussed negative vetting mechanism.

That the Bill was poorly drafted is self-evident: it took the Bills Committee 14 months to scrutinize the Bill and in total, there are 10 Committee stage amendments (CSAs) proposed by Members. They are not technical or miscellaneous amendments, but amendments to minimize the side-effects of toxic elements in this rough Bill. For instance, Mr Tommy CHEUNG's CSAs and my CSAs aim to restore the equal treatment that the HKPRs should be entitled to when buying properties in the name of a company owned by the HKPRs; Mr Andrew LEUNG's CSA and Mr Tommy CHEUNG's CSA including a sunset clause have rightly underlined the principle in black and white — which you, the Secretary, probably do not recognize as you like oral agreement, including the sunset clause. The Buyer's Stamp Duty (BSD) is nothing but a temporary measure, and that is why a sunset clause is needed; Mr James TO's CSA proposing to exempt charitable institutions from the BSD reasonably rectifies the discouraging provision that acts against the philanthropy of genuine charitable institutions; Mr James TO's CSA proposing to tighten up the proposed BSD exemption arrangement for mentally incapacitated persons tries to plug the possible loopholes; Mrs Regina IP's CSA and Mr Kenneth LEUNG's CSA propose to optimize the application of the HKPR concept concerning the eligibility of exemption under the BSD; Mr Dennis KWOK's CSA proposes to dispel the confusion created by the Administration in taking the BSD exemption away from the HKPR minors; and lastly, Mr James TO's CSAs require that adjustments to stamp duty rates could only be made by the Financial Secretary by way of subsidiary legislation subject to the Legislative Council's positive vetting, or by resolution of the Legislative Council — all these show how roughly and appallingly the Bill was drafted. I have been a Member of the Legislative

Council for 13 years. I have joined many Bills Committees and passed a lot of Bills, but I have never seen a Bill so poorly drafted.

President, the relationship between the Legislative Council and the Executive Council has turned from sour to rotten, with the Administration only responding to the Bills Committee's concerns in dribs and drabs, taking Members' advice mainly in a selective manner rather than on the basis of reason — when controversy arises, only those Bills Committee members who are the closest to the Administration are listened to — the only exception is the acceptance of introducing a BSD refund mechanism for redevelopment, as it was supported by reasons. What is the most unacceptable is that the Chief Executive and the Financial Secretary have pointed their fingers at the Bills Committee — particularly myself — for filibustering. What filibustering when the Bill is so badly drafted? We are only doing our duty, pointing out to the Government where the follies are.

The 18th century French Philosopher VOLTAIRE said, "It is dangerous to be right in matters on which the established authorities are wrong." I paid for this last September when I was accused (by a newspaper which is believed to be on good terms with the Administration) of dragging the Bills Committee's feet for preserving "developer hegemony". Were all these mere coincidences? I have been accused that if my amendment is carried through, the "developer hegemony" will be in place.

As a matter of fact, the Bills Committee held a total of over 22 meetings. As I said earlier, the Secretary probably has attended one meeting in full, and for the others, he only stayed halfway. If the Bill had been well-drafted; if the Administration had given straight answers to Members' queries; if the Administration had listened to and taken account of Honourable colleagues' legitimate recommendations, the deliberation period would have been substantially reduced. The Administration should know that "When you point one finger, there are three fingers pointing back to you." You deserve this treatment.

While I support the Government's introduction of tough measures in the property market, measures that would affect market operation and the economy must be done within bounds, and with sufficient transparency.

Earlier this month, Secretary Prof Anthony CHEUNG said the property market had been "tamed" following the introduction of the BSD and the *ad valorem* stamp duty rates (hereinafter referred to as "DSD"). This is ludicrous. By any measure, the 3Ds — SSD, BSD and DSD — are no blueprint for tackling housing problems and addressing people's housing needs. Statistics do not lie, statisticians do. The so-called "success" is sarcastical and is a statistical sleight of hand, for the Administration has never announced any official, objective definition of "success", leaving much room for the Administration to play with rhetoric.

When the SSD was announced in November 2010, the residential price index was 88.24, but Ms Starry LEE, the vice-chairman of the DAB, quoted it wrongly; it was 114.35 in October 2012 when the BSD was launched; it edged up further to 121.64 when the DSD was introduced, followed by the peak at 123.66 in March 2013. In brief, since the introduction of the first tough measure, the SSD, flat prices from 2010 to December 2012 have risen by 34%. Clearly, flat prices are beyond the reach of ordinary Hong Kong people, especially young people.

The Government's legislative intent was to help Hong Kong people buy flats at an affordable price, but was it successful? The answer is "No". On the other hand, the number of flats purchased by Hong Kong people fell from 155 000 in 2010 to just around 55 000 in 2013. The second legislative intent was to ensure that Hong Kong people can buy Hong Kong flats. If you compare with 2010, 100 000 people could not buy flats and the simple fact is the 3Ds have tightened flat supply. Saying that the 3Ds are designed to meet the policy objective of according priority to the home ownership needs of the HKPRs is simply untrue because nobody can buy a flat now — only the rich can, only the outsiders can, when they pay the 15% stamp duty. Moreover, the market is slowing down but the price has not actually gone down. The Secretary said the price has gone down by 0.1% in January when compared to December 2013. Yes, but when it has risen by 35% cumulatively, dropping 0.1% or 0.5% or 2% is irrelevant.

President, the Administration keeps saying that the BSD is effective in curbing flat prices from continuously soaring, but there are other reasons for the slowdown in recent months: the slowing down of China's economy, the phasing out of the Federal Reserve's QE policy and an expectation of a rise in interest rates have all held back the property price spiral slightly. Therefore, it is an

overstatement to credit the BSD with the property price trend, given that Hong Kong is an open, yet small economy that is influenced by fluctuations in the external economic environment. Interestingly, if the property market falls, it would be a golden opportunity to phase out the tough measures to allow the market to adjust itself; or at least the Government should reveal its criteria for lifting the measures to keep pace with the latest market expectations.

MR ABRAHAM SHEK (in Cantonese): President, as time is running out, maybe I now switch to Chinese so that I can speak faster.

President, there are a lot of inconsistencies in the Bill. What are they? President, the Government does not accept any amendment on the ground that there are a lot of loopholes if HKPRs acquiring a property in the name of a Hong Kong company are exempted from the BSD. I have also proposed a CSA on this issue. I have asked the Secretary what the loopholes are but he cannot give a concrete reply, but can only say that there are a lot of loopholes. President, how come Hong Kong companies and property developers can get a refund of the 15% stamp duty when they acquire 100% of the properties within the district during urban renewal, while ordinary HKPRs cannot get exemption when they acquire properties in the name of a Hong Kong company? I will talk about my CSAs later.

Moreover, as I have said just now, originally the Government proposed that children under the age of 18 who were born in Hong Kong are not required to pay the 15% stamp duty on the ground of the rights guaranteed by the Basic Law. However, in view of the numerous loopholes pointed out by Members, the Government suddenly withdrew the exemption for these children and instead asked them to pay the 15% stamp duty. President, the Secretary asks for our trust. How can we trust him? These are the loopholes.

There are many other examples. For instance, HKPRs are subdivided into many categories. For those who obey the Government, there is no need to pay the 15% stamp duty; for those who disobey, they need to pay the 15% stamp duty even when acquiring a property in the name of a Hong Kong company or by children under the age of 18. However, Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law (*The buzzer sounded*)

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PRESIDENT (in Cantonese): Mr Abraham SHEK, your speaking time is up.

MR ALBERT CHAN (in Cantonese): President, we, the People Power, indicated our support for the Second Reading of this Bill earlier because we considered the "curb" measures appropriate, and they were the last resort to suppress the property price and slow down the spiraling of property prices. However, as we explained earlier during the debate on the adjournment motion, since the Government suddenly distorted the legislative spirit and intent, and has, through black box operation and secret dealings, reach an agreement with the persons-in-charge of two major political parties who were also Members of the Executive Council, without the knowledge of other Members, we, the People Power, now change our attitude. While we support the "curb" measures, we attach even more importance to the spirit of the rule of law in Hong Kong, the transparency of policies as well as the monitoring of the executive authorities by the legislature. We cannot allow the authorities to disregard the importance of the system on account of some policy inclinations and the thinking that a small number or certain number of people will be benefited. The decision to resume the Second Reading of the Bill today breaches the spirit and principle of the scrutiny of legislation by this Council over the years, and also undermines the core value of the people of Hong Kong.

Therefore, I call upon Members, in particular the pan-democratic Members and the 34 Members who voted for the adjournment motion just now, to seize every opportunity to show their support to the discontinuation of the scrutiny of the Bill. When I request for a headcount later, I call upon all pan-democratic Members and in particular the 34 Members who voted for the adjournment motion just now, not to return to the Chamber for the meeting, so that a quorum will not be formed to continue with the deliberation of the Bill.

President, I request a headcount.

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

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, just now I said that those who sincerely support the adjournment motion should not return to the Chamber, so that the discussion on the Bill will have to stop. The reason is very simple. One supports the adjournment motion because he believes that there are problems with the Bill, such as the problem of making secret dealings as pointed by many Members, and the problem that the Government has unilaterally changed the legislative spirit and principle, and so on. All these will cast doubts on the integrity, reasonableness and legality of the Bill. Therefore, allowing the Bill to go through and complete the Second Reading is the same as abetting the evil-doer.

I will make repeated request for headcounts so if Members wish to leave, they should do so. Members have all experienced the long and tedious process of headcounts. I always state clearly at the outset what I am going to do. I always make my purpose known, unlike Mr Abraham SHEK who sometimes denies what he has done. Perhaps in his mind, he does not want to filibuster but I believe that subconsciously he wants to do so; or perhaps he has associated with us for so long that he has been influenced by us. Hence, he has somehow sown the seeds of filibustering during the scrutiny of the Bill which he may not have realized.

President, Secretary Prof Anthony CHEUNG mentioned, in response to the adjournment motion, that many amendments or views were put forward at the very late stage of the scrutiny of the Bill. This had happened before. The reason is simple. For some specific amendments, very often many Members, especially Members who have political affiliation, would wait and see if the Government would consider making any final amendments or whether the public have any strong views about certain provisions. Sometimes, Members were suddenly inspired or they suddenly realized certain important points, and they have to propose amendments. Therefore, it has been a normal practice that when Members find certain problems at the very last stage of the scrutiny of the Bill, they propose to discuss and make amendments through the Panels or Bills Committee.

However, it is unprecedented that the Secretary has made a secret dealing with two major political parties through black box operation. Therefore, we

cannot put the reasonable practices which are in compliance with the system and procedures on a par with some dubious practices, especially that of someone making a deal with the Government in the capacity of Members of the Executive Council. One kind of practice is sneaky, involving dubious dirty political tricks; while the other of practice is honest, reasonable and legal, doing things under the sun. Hence, we should not put such kind of sneaky behaviour on a par with that of Members. As a scholar, he fails to meet the moral standards required of a scholar and his behaviour is inconsistent with normal academic reasoning. Therefore, after he has joined the LEUNG Camp, there is nothing he can do other than acting like a lackey.

President, if Members find that there are problems with the whole scrutiny process of the Bill during the Second Reading, they should oppose it. Therefore, when this Council votes on the Second Reading of the Bill, the 34 Members who supported the adjournment motion should vote against the Second Reading. If they voted for the adjournment motion but also vote for the Second Reading, that means their support for the adjournment motion is bogus. How can they explain that they supported the adjournment of the Bill and hence voted for the adjournment motion, but later they support the Second Reading of the Bill? What kind of logic is this? What kind of value is this? To put it not so nicely, they "chided the Government a little but helped in a big way". They knew it full well that the adjournment motion would never be passed under the curse of the separate voting system in this Council, as Members returned by functional constituencies would never vote for the motion, so they showed their generosity at other people's expense, pretending to be just, and supported the adjournment motion. However, they were fully aware that the motion would never be passed by a majority in the hands of these "demons", these ugly Members returned by functional constituencies.

The voting that just took place in this Chamber is rare, in the sense that the result of the adjournment motion moved by a pan-democratic Member was 34 versus 33. The pan-democratic Members had actually won if a simple majority was needed. However, it could not get the support of the majority of Members returned by the ugly functional constituencies. In the voting on the Second Reading of the Bill later on, the result will be decided under the simple majority system which does not require the support of the majority of Members returned by functional constituencies. Therefore, if the 34 Members who supported the adjournment motion just now were sincere, in principle they did not consider that the Bill should be read the Second time because they wished to adjourn the

debate, then logically speaking and according to their values, they should vote against the Second Reading of the Bill. Otherwise, that was another fraud, that is, they pretended to be heroes but at the critical moment, they would stand aside, which is not much different from the approach of the wretched lackey of "LEUNG's fans".

Therefore, the People Power originally intended to support the "curb" measures. We have supported them all along. However, today as I have just explained, owing to the destruction to Hong Kong's system, the undermining of our values and the total deprivation of the dignity of this Chamber, we must fight on by all means to oppose the Second Reading and the scrutiny of this Bill, so as to safeguard our bottom line. Hence, in the next few days, whenever there is a chance, we will make repeated requests for headcounts. Members can return if they like. Here I would like to call upon the pan-democratic Members not to have so many people sitting in this Chamber. The 33 Members who voted against the adjournment motion should be the one to pass the Bill. For those who voted for the adjournment motion, they should not facilitate the continuation of the scrutiny of the Bill. "Long Hair", I will leave after requesting a headcount. He is sitting here just to wait for his turn to speak.

President, why did the People Power originally support the Bill? That was because the Bill clearly aimed at safeguarding the interest of local people. That is to say, as long as you are a Hong Kong resident, you will be protected; and if you are not a Hong Kong resident, we will do our utmost to reduce your desire to purchase properties in Hong Kong. As a matter of fact, the policy on "Hong Kong property for Hong Kong residents" also stems from the local consciousness, which is a strategy and policy to safeguard local people's interest. It is similar to the \$100 land entry tax proposed by the People Power, which also aims at safeguarding the local values. Therefore, in respect of the principle and intention, the "curb" measures are discriminatory against the Mainlanders and hurt their feelings, right? The "curb" measures are the same as the "powdered formula restriction order" which even barred the Director of Hong Kong and Macao Affairs Office from buying powdered formula for his grandchildren. Similarly, it not only hurts the feelings of the Chinese people, but also the privilege of the Chinese officials. Therefore, why do the "curb" measures not hurt the feelings of the Chinese people? How come *Wen Wei Po* and *Ta Kung Pao* claimed that the proposal to impose a \$100 land entry tax was as a means aiming for the independence of Hong Kong which would hurt the feelings of the Chinese people? I would like to ask the Secretary to explain later why he has

the privilege to discriminate against the Chinese people and bar them from purchasing properties in Hong Kong. He states right from the outset and takes a clear stand that he discriminates against the great people of China, barring them from purchasing properties in Hong Kong. How dare he?

Therefore, I hope that Members will put their logical thinking, values and preference in order and think clearly where they stand, rather than stand behind their master like a wretched lackey and wag their tails when their master tell them to do so. We strive for the logic and consistence in everything and we will not constantly move the goalposts. People nowadays always move the goalposts, denying what they have said. That is the Chief Executive's favourite tactic and the Hong Kong Federation of Trade Unions (FTU) has also had a taste of it. He had promised to set the maximum working hours but in the end, the FTU was cheated by him, but the FTU members were willing to be fooled by him, they continued to follow his baton and do whatever he told them to do. Of course, the FTU is at least slightly better than the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Unlike the DAB, the FTU members still have some principle, which is commendable. The DAB truly follows him, acts as his wretched lackey, continues to wag its tail and pretends to be loyal to him. Its members continue to wag their tails and compete with one another in dancing the "Loyalty Dance", trying to outdo one another.

Therefore, it is no use to uphold the principles. If you want to talk about the logic, many people do not think logically. Isn't it right? One can tell at a glance which policies have a definite target and which policies are for some special purposes. Why would you welcome certain policies that target against Mainlanders but find other policies that also target against Mainlanders discriminatory?

As a matter of fact, a couple of days ago some people staged a protest in Tsim Sha Tsui. If Mainlanders are asked about their views on this discriminatory policy targeting against their purchase of properties, they can also say the same things, that it is wrong to discriminate against them, that Hong Kong should thank them for their contribution to the prosperity of Hong Kong, and that the property prices in Hong Kong can remain stable, Hong Kong people have the money to build houses, and construction workers have jobs all because the Mainlanders come to purchase properties in Hong Kong. They can also say so. However, you have to tell the Mainlanders that the "curb" measures are put forward by LEUNG Chun-ying, and backed by the DAB and the Business and

Professionals Alliance for Hong Kong (BPA). They are holding the red flag high only to oppose the cause of the red flag. They talk about loving the country and loving Hong Kong, but at the same time discriminate against the great people of our mother country. See if *Wen Wei Po* and *Ta Kung Pao* will not report tomorrow that the Legislative Council endorses the "curb" measures, discriminating against the people of our mother country and striving for an "independent Hong Kong", and that LEUNG Chun-ying is actually striving for an "independent Hong Kong" and he discriminates against the Chinese people.

Therefore, at first we supported the "curb" measures in principle because the discrimination thereof was wonderful, targeting against the Chinese people. However, in the end, they aimed high but shot low; so when the DAB and the BPA "kneel down", their attitude changed again.

President, is a quorum present? It does not seem so. Please do a headcount. "Long Hair", you can go to the restroom. President, I request a headcount.

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

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, I would like to make one more point. When the People Power first proposed the land entry tax, someone said that if we imposed the entry tax today, the Mainland would also impose the entry tax in future. The "curb" measures will bring about the same situation, that is, today Hong Kong imposes a special tax on Mainlanders, in future the Mainland will also impose a special tax on Hong Kong people when they buy properties in the Mainland. Why is this logic not applicable to the "curb" measures? I hope that the Members who support the "curb" measures will talk about why there are double standards and a double set of criteria later on.

President, the People Power will continue to speak against the scrutiny of the relevant provisions and condemn the Government for making secret dealings to jeopardize the tradition and model of the operation of this Council.

MR WONG KWOK-HING (in Cantonese): President, it has been more than 10 months, straddling three calendar years, since the measures in the Stamp Duty (Amendment) Bill 2012, commonly known as the "double curbs" measures, were rolled out in the year before last. Since the Government introduced the "double curbs" Bill, we have seen positive feedback from various public opinion polls and commentaries. The mainstream public opinion is that the Government has done the right thing, and there are comments that this Government led by LEUNG Chun-ying dares to battle with property developers. Moreover, we now seldom hear people accuse the current-term Government of colluding with the business sector or transferring benefits to property developers.

We can also see that since the "double curbs" Bill was introduced, property prices have eased back a lot, and the property bubble no longer keeps inflating property prices as it did a few years ago. Property prices have soared beyond the reach of the masses who wish to acquire their own homes. No matter how hard they try to cut their expenditure on clothing and meals, they cannot save enough for the down payment; even if they have saved enough for the down payment, it is not easy for them to make mortgage payments. In the face of soaring property prices, many members of the public have become "shell-less snails", particularly young people and those who want to have their own homes and get married. They are left out in the cold. This situation is apparent to all.

The past decade or so is generally regarded as a significant fact that marks the process in which the wealth gap in Hong Kong has become wider and wider. It is commonly said that "property developers have become so fat that they cannot even put their socks on". This has been criticized on innumerable occasions by many Honourable colleagues in this Council.

Since the current-term Government assumed office, it has been governing in adversity. In my view, this Government does have the resolve and courage to take forceful measures to tackle head-on the housing and land problems, which top the list of livelihood issues in Hong Kong.

The present "double curbs" measures seek to help Hong Kong people by way of managing demand. What is wrong with that? It is obvious who stands to benefit and who stands to lose from the "double curbs" measures introduced by the Government; otherwise, property prices would not have come down in the recent 10-odd months. This is an indisputable fact. The rights and wrongs are very clear. We cannot shut our eyes to, or refuse to admit, the effects of the "double curbs" measures.

The enhanced Special Stamp Duty is aimed at curbing short-term speculative activities. Some time ago, was it not the case that many Honourable colleagues bore a bitter hatred for short-term speculative activities conducted in the market and kept calling for countermeasures? The purpose of the Buyer's Stamp Duty is essentially to help local people by increasing the tax burden on non-Hong Kong permanent residents so that the latter will face more resistance in accessing the market. This is apparently a benevolent policy, a good deed of the current-term Government which helps local people or Hong Kong permanent residents resolve their difficulties in achieving home ownership. Nonetheless, as I said at the beginning of my speech, the current-term Government dares to battle with property developers, but does this mean that it is bound to be accused and attacked on all fronts? In this regard, I can, however, see that the resistance put up by property developers to the implementation of policies by the Government is indeed intricate. This invisible "black hand" is really influential. Look, the debate in this Council today is truly spectacular. The "double curbs" measures are actually a demon-revealing mirror that reflects the true faces and true positions of Members, and whether they are on the side of the general public or defending the interests of property developers. I hope that all Hong Kong people will look at this Council as reflected in this demon-revealing mirror of the "double curbs" measures to identify the true faces of our Honourable colleagues.

President, we as Members from the Hong Kong Federation of Trade Unions (FTU) support the Bill proposed by the Government, and we support the Secretary in accepting, on behalf of the Government, the views expressed by Members in these lengthy discussions. We oppose the various amendments proposed by Honourable colleagues. This is the position of the FTU.

Secretary Prof CHEUNG, I would like to take this opportunity to express my appreciation and support for you. Today, a Member has proposed to adjourn the Second Reading debate, and you have been subjected to many personal attacks and insults; still, you have managed to endure humiliation and stay

cool-headed for the sake of accomplishing an important mission. You are a scholar, and I have listened to your lectures. I look up to you as a man of uprightness and integrity, and you do what you consider is right. Secretary Prof CHEUNG, you must persevere, because this battle you are fighting now is not only a discussion with Members, but a battle with property developers. You can see how powerful the influence of property developers is. The scrutiny of this Bill has straddled three calendar years from 2012 and lasted for 10-odd months, during which we have experienced a filibuster in disguise — it is not a filibuster on the face of it, but it is a *de facto* filibuster — and today, the commencement of the Second Reading and Third Reading is actually being filibustered too. This is the actual situation.

President, as for the amendments proposed by the Honourable colleagues concerned, why are we not in favour of them? Let me try to give examples to explain. The negative vetting procedure currently adopted by the Government is the correct approach, as this can allow responsive actions to be taken to address the very sensitive property market, and prevent speculators or stakeholders from taking advantage of any opportunities to stir up trouble. Thus, the Government must adopt the negative vetting procedure so as to be able to take corresponding actions promptly by capitalizing on taxation arrangements. Over the last 10-odd months, property prices have eased back as a result of the relevant arrangements. But strangely enough, while the negative vetting procedure has been serving its purpose, there is now a proposal to change it to positive vetting, and such an amendment was only proposed at the last minute. The Member proposing such an amendment certainly understands the counteraction of this proposal, which would only be welcomed by speculators and property developers.

As regards the 60-day period or sunset clause mentioned by Members in their amendments, everyone knows that the Government is not a fortune teller, nor does it have a crystal ball, so how could it know at the time of drawing up this Bill that the problem could be solved by suppressing demand at "sunset"? How could it predict that the problem would be solved within a prescribed time frame? This is impossible. Therefore, we cannot support amendments containing such contents.

President, I was not being unreasonable in describing the "double curbs" measures as a demon-revealing mirror. Now, as we can see, those opposing this Bill proposed by the Government certainly include Members representing the business and real estate sectors. They have spoken plausibly and at length with their justifications. In my view, this gives no cause for much criticism as their

interests are at stake, and so they must act in this way. This is not surprising at all. What is surprising is the position taken by the Members and political parties that have kept accusing the Government of colluding with the business sector, transferring benefits and favouring property developers over the years. Where do they stand today? What are their reasons? It is really ridiculous that they are using utterly extreme reasons to oppose this Bill. They are just illogical and politically immoral. They have forgotten what they used to say when they were trying to win the support of the public and the votes of their constituents. They have forgotten everything. This is very regrettable indeed.

President, I wish to ask the Members who want to disrupt the proceedings of this meeting by deliberately causing it to be aborted or requesting headcounts, and the Members who oppose this Bill trying to prevent it from being passed, to think twice. What would be the consequences of such actions for Hong Kong's property market? Who in Hong Kong would benefit from such actions? Property developers would be cheering joyfully, but what about the general public? I hereby publicly challenge the Members who are against this Bill: if you succeeded in opposing this Bill, what historical consequences would you have to bear? Please think about this.

I hope that Members from different political parties or with different political views, be they leftists, neutralists or rightists, can act in the interests of Hong Kong and the community at large, and have regard to the well-being of the masses who have been unable to acquire their own homes all these years. You are not opposing LEUNG Chun-ying's Administration, but acting against the interests of the general public.

President, lastly, I would like to make use of the dozens of seconds left to talk about the demand-side management sought by this Bill. If we want Hong Kong people to live and work in peace and contentment, we certainly cannot just rely on this Bill, as it only focuses on one aspect of the issue. The Government must squarely address the problem of supply and demand at source by increasing supply. Only through this can the issue be resolved fundamentally. Secretary CHEUNG, I welcome the Government's formulation of a long-term housing strategy as well as a 10-year housing production target. I really hope that the Government can set a clear direction on the supply side and step up its efforts in achieving the housing production target, so as to meet public expectations.*(The buzzer sounded) ...*

PRESIDENT (in Cantonese): Mr WONG, your speaking time is up.

MR CHUNG KWOK-PAN (in Cantonese): President, the original intent of this "double curbs" Bill is to control rising property price. However, while we did not see much reduction in property prices last year, the whole property market has been frozen instead. Most people may think that this will only affect estate agents engaging in property transaction, but in fact, the effect has extended to banks, lawyers, renovation workers and retailers, such as electric appliance and furniture sellers. Recently, some banks have relayed to me that their mortgage business has dropped almost 90%. Can we simply assume that such measures only affect a small group of people? Of course, I believe government revenue has also decreased, and I believe that the Budget to be delivered next week will reveal that the revenue of various types of stamp duty have dropped significantly.

Practically speaking, how much should the property price drop before we consider it appropriate? Should it be 20%, 30% or 40%? If the price is lowered by 10% to 20%, I can tell you that the effect is not big. However, a reduction of over 30% will lead to another problem and that is negative equity. When there is a problem of negative equity, we expect that another group of people will complain and suffer. We have experienced such situation before. About 10 years ago, people had a very miserable time and the economy was bad under the impact of negative equity. Is this what the Government would like to see? Does the Government hold that property price should at least drop more than 30% before it considers that the duty rates should be reduced?

President, I will say that people's psychology is weird. When property price falls, nobody will buy flats because when property prices have dropped 30%, people may expect that it would further get down to 40% or 50%. In the most extreme case, property prices in Hong Kong had slumped 65%. So, when property prices plunged, let me tell you, people with money will not buy properties for they expect further plunge. Will the effect be attained? Will lower property prices naturally encourage home acquisition? I doubt very much if this is the practical experience we had about 10 years ago.

In addition, President, two groups of people will suffer great difficulties in case the property market slumped. Of course, the middle class or people with property will no longer benefit from the housing wealth effect. In fact, a drop in property price affects small and medium enterprises (SMEs) greatly as many

SMEs mortgage their only property unit or office premises in exchange for business loan or other facilities from banks. Once property market goes downward, banks will immediately ask for loan repayment. Then how do these SMEs face this situation? This will actually produce massive chain effects and bring great impact to the economy and various aspects that we should never overlook.

Speaking of doing business, Hong Kong has all along been very transparent and we know what policies will be implemented. However, the SAR Government has recently launched many new initiatives which have distorted the policies of transparency and certainty. Will general businessmen or overseas investors find it easy to accept such great changes at the moment? Of course, we understand that we should increase the supply of housing units, as the Secretary has now indicated that we need 480 000 housing units in future. However, the facts are that the construction costs and normal land premium are currently over \$4,000 and as much as \$4,000 to \$5,000 per square foot respectively. Putting aside whether developers can make a profit, the cost itself is over \$10,000 per square foot. There can hardly be any reduction in property price under the current policy of high land premium. To lower the property price, the Government should first reduce land premium. However, in some recent tendering exercises, the Government rejected some applications because the tender price was too low. As such, how can property prices be lowered? There is one point I am sure of, owing to business considerations — I am not a developer, nor do I have any relationship with developers — I am just considering from the perspective of a businessman, nobody will do business if they cannot even cover the costs. That is to say, if the per-square-foot cost is basically more than \$10,000, developers will very likely stop selling the units, which will in turn reduce supply and property price will be pushed up again. Is such kind of development healthy? Absolutely not.

In fact, in my view, the policy with the quickest effect is to increase the number of public rental housing (PRH) units and expedite the turnover of such units. Why? We all look forward to moving up the housing ladder, and so do property owners. People living in PRH units would like to move to Home Ownership Scheme (HOS) flats, while HOS flat owners look for opportunities to reside in private residential flats. When people have a private flat of 700 sq ft, they will look forward to a 1 000-square-foot flat and later to a 1 500-square-foot flat. However, they have no opportunity at the moment, because the property market has been frozen.

So both buyers and sellers are indeed unable to benefit from the "double curbs" measures. Buyers have to pay more tax while sellers have to slightly lower the price before they can get their property sold, hence with one party paying more and the other party earning less, who can be benefited? In fact, both buyers and sellers have none to gain. As I have already mentioned, we understand that property price is high at the moment, at over \$10,000 per square foot on average. But even if it drops 50%, we still need to pay \$7,000 to \$8,000 for 1 sq ft. In this case, people who cannot afford a flat will still be unable to buy a flat. Nobody will be benefited, but it may end up affecting economic development or giving people an impression that government policies have been completely distorted.

Therefore, I conclude that the "double curbs" measures are actually a Bill of sheer mockery and self-deception.

President, I so submit. Thank you.

(Mr CHAN Chi-chuen stood up)

PRESIDENT (in Cantonese): Mr CHAN Chi-chuen, what is your point?

MR CHAN CHI-CHUEN (in Cantonese): A point of order. I request a headcount according to Rule 17(2) of the Rules of Procedure.

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

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

PRESIDENT (in Cantonese): Mr Jeffrey LAM, please speak.

MR JEFFREY LAM (in Cantonese): President, the problems of high property prices, home acquisition difficulties and high rentals have all along been the concerns of Hong Kong people.

At the end of 2012, the Government introduced the "double curbs" measures to suppress the over-heating property market. Most people consider that these measures are well-intended, and hope that such "curb" measures can resolve the problem of sky-rocketing property prices. They may then take this opportunity to buy flats and get their first homes at relatively reasonable prices. However, the industrial and commercial sectors have reservations about some details of such "curb" measures, and their opinions are worth noting.

President, Hong Kong has all along been the world's freest economy. We adopt an open door policy and welcome enterprises from different places around the world to come and start businesses in Hong Kong. Some consider the Buyer's Stamp Duty (BSD), a tax levied for certain prohibitive behavior, will affect Hong Kong's reputation as a city of freedom. The Hong Kong General Chamber of Commerce has also indicated that the "curb" measures might affect Hong Kong's international position and competitiveness, and jeopardize our international reputation. In fact, upon the introduction of the "curb" measures, officials of foreign consuls and overseas companies have indicated that such "curb" measures did affect them.

Further controversies arose when the Government indicated the applicability of BSD to all transactions in the name of companies in order to plug the loopholes. We should be aware that it is a very normal and common practice for companies doing businesses in Hong Kong to purchase property in the name of the company. If a company purchases a property for business purpose, it has to pay 15% additional tax. If a property is purchased in the name of shareholders, many problems will arise and we think it is not feasible. Indeed, we need not go far for examples, many Honourable colleagues do not buy flats in their own names but in the name of companies. Why do they do so? Of course there are different reasons. Some may relate to tax issues, some may due to family problems, and so on.

We, the Business and Professionals Alliance for Hong Kong (BPA), had time and again expressed to the Government such concerns at the Bills Committee, and we had proposed several practical suggestions, such as exempting BSD upon satisfying some established conditions. At the end, we

proposed that a refund mechanism could be put in place, under which companies owned by Hong Kong people might apply for refund three years after taxation, provided that there was no change in the shareholders and share capital of the company. How can there be a loophole in our proposed mechanism as tax has already been collected by the Government? We are not asking the Government to approve any refund application from companies upon expiration of three years. If there is anything unclear, the Government can ask the applicant concerned to submit evidence before further processing the application. Many people consider that the Government's replies are still not convincing enough. Some members of this Bills Committee have repeatedly indicated that there are loopholes with this mechanism, but what exactly are these loopholes? Mr Christopher CHEUNG has been racking his brain for an answer but still fails.

We are also concerned about the chain effects brought about by the "curb" measures. We should still remember that after the Government introduced the "curb" measures in 2012, the capital flowed to the speculation of parking spaces, retail shops, office premises and so on, resulting in drastic surge of such property prices. Small and medium enterprises could not even afford to rent an office, and retail shops were under the pressure of higher rentals. The Government ended up introducing the third "curb" measure, that is, the enhanced *ad valorem* stamp duty to suppress property speculation.

President, the effects of the "curb" measures are extensive. The Government said that these are extraordinary measures introduced under exceptional circumstances for healthy development of the property market. Judging from the transaction volume alone, the "curb" measures have successfully reduced the number of transactions by over 50%. The property market has been cooled down. But if we look at the property prices, they are still on the increase even after the introduction of the "curb" measures. The increase is particularly significant for small to medium-sized flats. People hope that property prices can return to an affordable level upon the introduction of the BSD by the Government. However, in reality, after the "curb" measures are implemented, people who want to buy flats still cannot afford to do so while tenants have to pay more for their rented flats. We can at most say that the "curb" measures stop property price from rising, but cannot solve the housing problem. Of course, judging from another perspective, will property prices escalate to another high without the "curb" measures? We cannot be sure about that.

President, both the industrial and commercial sectors and the general public hope to have a stable property market and they support the Government's efforts in restoring the market to a healthy state. However, when introducing such "curb" measures, the Government should not ignore the effects resulted. We have expressed our opinions to the Government and proposed a lot of different suggestions. We also want to improve the different "curb" measures instead of "trimming the toes to fit the shoes".

The "curb" measures are indeed unable to resolve the housing problems in Hong Kong. After all, the Government still has to increase land supply and control construction costs as far as possible. Regarding construction costs, several years ago, we found that the rising construction costs was one of the reasons for the property hikes. The construction cost per square foot has increased from \$2,000-odd to more than \$4,000 during the past two to three years. Bread is expensive when flour price increases. How should we tackle the problem? I consider that the Government should seriously look into the issue, and perhaps introduce more "curb" measures. The "curb" measures alone are not enough. The community should support the Government in identifying more land for housing construction. We can never solve the problems of land and housing supply and the difficulties in home acquisition if we keep opposing land development on the one hand and blaming soaring property prices on the other.

President, property market in Hong Kong is easily affected by the external environment. Recently, the United States has been preparing for exiting the market. Interest rate may rise any time, just that we are not sure of the timing. The market will respond very quickly once interest rate increases. By that time, the stock market, property market and even our export and manufacturing businesses will react immediately. In fact, many people also believe that there are increasing factors leading to the increasing volatility of the property market. When we see developers making various special offers for first hand buyers, and second hand property owners are willing to cut price for sale, is the property market going to turn bad?

We are worried about what should be done if the property market slumped one day. Panic selling of properties will lead to a drastic plunge in property prices. The Government should then respond quickly and appropriately. If downward adjustment of the duty rates has to be submitted to the Legislative Council for prolonged discussion, the Government may miss the golden chance

for action and several millions of property owners may suffer loss as a result. From the experience of several property slumps in the past, there was no panic selling even though property price dropped 5%, 10% or even 20%. But if nothing is done to stabilize the market, there may be a sharp fall and market chaos may get out of control. Therefore, the Government should make timely adjustment or withdraw the "curb" measures immediately if property price drops due to an increase in interest rate or some other economic issues. Thus, I think in emergency cases when the duty rates should be adjusted downward, we should do it by negative vetting in the Legislative Council.

Actually, many people agree with this arrangement. However, in the past few days, some people have been making blind speculation about any covered reasons without listening to a complete speech. So far, these people still believe in those reasons they created themselves, which are not the practical reasons. What we are most eager to see is that the healthy development of the property market can be expeditiously resumed with increasing supply of public and private housing, so that people can have better living environment. We hope that the "double curbs" measures are just short-term initiatives. In the long run, we wish that sufficient land will be made available for developers or the Government to construct public rental housing units. We also hope that the whole community will try to adopt an accommodating attitude when land has been identified, and not impose barriers. This will just result in delay in land development and housing construction.

President, I so submit.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at eight minutes past Ten o'clock.

Appendix I

WRITTEN ANSWER

Written answer by the Director of Environmental Protection to Ir Dr LO Wai-kiok's supplementary question to Question 6

As regards conservation of rare and precious plants in Hong Kong, plant conservation is a long-term task with strategic significance. It is important for conservation of biodiversity and maintenance of a balanced ecosystem. Plant conservation work in Hong Kong during the early 20th century was primarily focused on afforestation for soil erosion control. In recent decades, the attention has shifted to habitat conservation and enhancement, fighting against hill fire and enforcement on illegal felling of tree and exploitation of valuable plant species. The Government is currently taking the following measures to enhance the conservation of rare and precious plant species in Hong Kong.

Habitat Protection

A total of 24 Country Parks and 11 Special Areas (outside Country Parks) have been designated under the Country Parks Ordinance (Cap. 208), covering about 40% of the total land area of Hong Kong. The Agriculture, Fisheries and Conservation Department (AFCD) manages these areas for nature conservation, outdoor recreation, tourism, education and scientific studies. A large number of rare plant populations in Hong Kong are located within country parks, which are under statutory protection. In addition, there are now 67 Sites of Special Scientific Interests (SSSIs), of which many are established owing to their floristic importance, so that the rare and precious plants could be protected from land use planning perspective. For example, Mau Ping at Ma On Shan has been listed as a SSSI in recognition of the presence of the largest population of *Camellia crapnelliana* in Hong Kong.

Species Protection and Legislation

Under the Forests and Countryside Ordinance (Cap. 96), damaging any plant in forests or plantations on Government land is strictly prohibited. In addition, a total of 27 kinds of plants including all tree ferns, orchids, and some rare or plants with significant economic or scientific value, such as *Camellia* species, *Enkianthus quinqueflorus*, *Impatiens hongkongensis* and *Iris speculatrix*, have

WRITTEN ANSWER — *Continued*

been specifically listed in the Forestry Regulations, subsidiary legislation of Cap. 96, to control their sale or possession. Some native plants of Hong Kong are also protected by the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586), which controls the import, export and possession of endangered species.

Ex-situ conservation and Active Propagation

To supplement habitat protection, the AFCD has set up the Shing Mun Arboretum in Shing Mun Country Park for ex-situ conservation. About 300 species including some rare and representative species have been established there. In addition, the AFCD has propagated rare plants through various methods, such as seed collection and cutting. The seedlings are subsequently reintroduced to the wild at suitable habitats within the country parks, to facilitate the establishment of new populations and flourishing of the species in the wild. Successful examples of active propagation include *Keteleeria fortunei*, *Camellia hongkongensis*, *Camellia crapnelliana*, *Camellia granthamiana*, *Enkianthus quinqueflorus*, *Rhodoleia championii*, *Illicium angustisepalum*, *Castanopsis concinna*, *Lithocarpus konishii* and *Aquilaria sinensis*.