

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 14 June 2006

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

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

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

DR THE HONOURABLE LUI MING-WAH, S.B.S., J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

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

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

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

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H.

THE HONOURABLE DANIEL LAM WAI-KEUNG, B.B.S., J.P.

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

THE HONOURABLE MA LIK, G.B.S., J.P.

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

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

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

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBERS ABSENT:

THE HONOURABLE WONG YUNG-KAN, J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

DR THE HONOURABLE JOSEPH LEE KOK-LONG

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE FINANCIAL SECRETARY

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR HOUSING, PLANNING AND LANDS

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

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

DR THE HONOURABLE YORK CHOW YAT-NGOK, S.B.S., J.P.
SECRETARY FOR HEALTH, WELFARE AND FOOD

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
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Marine Parks and Marine Reserves (Amendment) Regulation 2006	134/2006
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Dangerous Goods (Consignment by Air) (Safety) (Amendment) Regulation 2006 (Commencement) Notice 2006	135/2006
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Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 2006 (Commencement) Notice 2006	136/2006
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Air Navigation (Hong Kong) Order 1995 (Amendment of Schedule 16) Order 2006 (Commencement) Notice	137/2006
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Other Paper

Report of the Bills Committee on Securities and Futures (Amendment)
Bill 2005

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Review of Public Housing Rent Policy

1. **MR LEE CHEUK-YAN** (in Cantonese): *President, the three-month public consultation conducted by the Housing Authority (HA) on the review on the rent policy for public housing concluded last Friday. In this connection, will the Government inform this Council:*

- (a) *whether it will first introduce rent reduction for public housing and then review the rent adjustment mechanism, as proposed in the motion passed by the Panel on Housing of this Council at its meeting on 25 May; and*
- (b) *given that the authorities' proposals on the rent policy for public housing have not received wide support, whether new options will be introduced for another round of public consultation?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):
President, my reply to the two parts of the question is as follows:

- (a) As I made it clear at the meeting of the Legislative Council's Panel on Housing on 26 May, we should embrace a comprehensive and holistic approach in considering how the rents of public rental housing (PRH) are to be adjusted. The current public consultation on review of domestic rent policy aims to establish a rent adjustment mechanism that is practicable and correlates with tenants' affordability. To this end, the HA's Ad Hoc Committee responsible for the review has proposed a rent adjustment mechanism that makes reference to the movements in either Consumer Price Index or tenants' household income as a basis to determine when PRH rents should be adjusted and the extent of such adjustments.

We fully subscribe to the view that for the proposed rent adjustment mechanism to operate fairly and effectively, it is necessary to identify a rent level that is considered appropriate and acceptable to the community to provide a new starting point. In our quest for establishing such a rent adjustment mechanism and an appropriate rent level, there does not exist a question as to which issue should first be addressed, as we believe both should be looked into concurrently.

The Ad Hoc Committee will carefully consider the views collected, and make recommendations regarding the rent adjustment mechanism as well as the rent level upon which the new mechanism should operate.

- (b) The public consultation on the review of domestic rent policy concluded last Friday. During the three-month consultation, we received a wide array of public opinions through various channels, such as the Legislative Council, District Councils, local forums, meetings with resident groups and academics, written submissions, telephone opinion survey, and so on.

The issues covered by this review are very extensive. And so are their implications. As all the issues identified in the consultation paper are controversial in varying degrees, it seems improbable to expect that a consensus could be forged among different strata of the community on each and every proposal. Nonetheless, our preliminary analysis shows that the public is supportive of the most important reform proposal put forward in this review, which is to establish an objective, rational and practicable rent adjustment mechanism. The majority of the public opinions is also in favour of adopting changes in tenants' household income as a basis for adjusting PRH rents. Admittedly, views from various sources are more divided on other secondary issues, such as differential rents. But overall, different quarters in the community, especially public housing tenants and resident groups, have fully and clearly made known their views and positions through the consultation exercise.

The primary task of the Ad Hoc Committee now is to further collate and analyse in greater depth the views received, and to submit its recommendations and report to the HA as soon as possible. We believe it is unnecessary to put forward any new proposal for further consultation. Obviously, in the course of putting the recommendations into practice, particularly if this involves amendments to the existing legislation, we would continue to maintain a close dialogue and consultation with Members through the existing channels, including the Legislative Council and the HA.

MR LEE CHEUK-YAN (in Cantonese): *It has always been the Government's practice to take no action during deflation but propose the establishment of an adjustment mechanism whenever inflation emerges. This applies to railway fares and PRH rents. According to our proposal, rents should be reduced*

before the review. The Secretary should have reduced PRH rents during deflation. Hence, he owes the PRH residents throughout the territory for failing to do so. It has always been the Secretary's style to give a "slippery" reply to the question as to whether PRH rents will be reduced first. However, I hope he can reply us directly, for he should preferably do so. He has agreed in his "slippery" reply that, for the rent adjustment mechanism to operate effectively, it is necessary to identify a rent level that is considered appropriate and acceptable to the community as a new starting point. Why did the Secretary not behave honestly, given that the starting point must be reduced rents? Can he tell us clearly today that the starting point is reduced rents and let us know his preferred rent level as a new starting point before having a dialogue with the public to consult them whether the new starting point is appropriate? Can the Secretary answer this supplementary question direct?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I am sorry that I can hardly give a direct reply to this supplementary question today, because I cannot represent the entire HA. As Members are aware, the decision must be made by the HA. As I made it clear in the main reply, the consultation has just been concluded. The Ad Hoc Committee has collected a lot of views and is analysing and collating them. The Ad Hoc Committee will make commendations on these views and submit them, if endorsed, to the HA. With the consent of the HA, the recommendations will be presented to the Government for implementation and legislative amendment, as well as follow-up actions in other respects.

As for the question raised earlier regarding whether the Secretary can honestly say whether rents will be reduced first, I have actually made it very clear that it is not a question of which issue should be addressed first, for this must be done. The matter must be considered in a holistic manner, given that no mechanism is in place now that allows us to reduce rents. Therefore, a mechanism must be put in place before we can consider, according to the principles established by the mechanism and in the light of the circumstances in the past several years, how to make adjustments. Without this mechanism, there is no way for us to make a more objective and rational adjustment. We have always emphasized that both must be done concurrently, and the same approach will be adopted by the Ad Hoc Committee and HA too. However, I cannot say categorically how we will proceed definitely. We must look into the

findings of the study, the collected views and the analysis before deciding how to proceed. I hope Members can patiently wait several months. I can promise Members here that, after the data are collated and the HA has endorsed some of the options, I will promptly notify the Panel on Housing for Members' consideration.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has not answered my supplementary question. He has given me an "extremely slippery" reply again. I simply asked him whether the new starting point would be reduced rents.*

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

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I have explained the new starting point very clearly earlier. Now I am going to repeat it again. Insofar as the mechanism is concerned, we have to examine the findings to determine, for instance, whether a rent reduction should be introduced and the extent of such reduction. The answer will only be available until then. As we have yet to reach this stage today, there is nothing I can say here.

PRESIDENT (in Cantonese): There are altogether 12 Members wishing to ask supplementary questions, so will Members who have the opportunity to put supplementary questions please be as concise as possible.

MR FREDERICK FUNG (in Cantonese): *President, a conclusion on the consultation has actually been drawn by the Secretary already. In the second paragraph of part (b) of the main reply, it reads: "The majority of the public opinions is also in favour of adopting changes in tenants' household income as a basis for adjusting PRH rents". I believe the Secretary will accept this conclusion as the primary basis for future reference. May I ask the Secretary whether the fact that we have experienced deflation and the income of PRH tenants has dropped 20% since the freezing of rents in 1998 will be taken as the most significant basis for considering a rent reduction?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

As I mentioned earlier in the main reply, we will mainly consider two points, namely Consumer Price Index and income changes. We will definitely not deviate from these two points. As mentioned by me in the second paragraph, the majority of the public opinion is in favour of putting emphasis on changes in household income. Our position is that this direction will certainly be followed should this view be supported. Having regard to the economic situation over the past several years and the changes in household income, the possibility of a rent reduction is certainly very high, should the mechanism be truly implemented in future.

MR ALAN LEONG (in Cantonese): *President, in the fourth line of the last paragraph of part (b) of the main reply, the Secretary said, "We believe it is unnecessary to put forward any new proposal for further consultation", suggesting that no new proposal will be put forward but ways to set up the rent adjustment mechanism will be examined in a more focused manner instead. May I ask the Secretary whether the three-month consultation is adequate? Before that, differential rents seemed to be the focus. If no new proposals are forthcoming, will the Secretary consider allowing people of the community to determine the threshold for rehousing, ways to make the "revolving door" more effective for well-off tenants, or offering a comprehensive package of rent assistance? Can the Government conduct another round of consultation on these issues as a package?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

As I stated earlier, a request was made in the main question for the Government to conduct a consultation on several major subjects. In this connection, we will adhere to our guidelines in determining the direction of work. The majority of the people are supportive of the rent adjustment mechanism. Of course, the mechanism still has a lot of minor details, some of which were mentioned by Members earlier. However, these problems will not arise until the mechanism has been established. I hope Members can be more patient. As I pointed out earlier, should the mechanism be truly set up, we will definitely consult the relevant panel again. Should the mechanism be truly put into implementation and legislative amendment be required, we will specify in detail how the mechanism will operate on a legal basis. It will take a very long time for the relevant bill to be considered by different committees, or even through the

establishment of an ad hoc group. Such being the case, I believe Members will have a lot of time discussing the issues raised, for this is an integral part of the process. In my opinion, it might be too early for us to conduct against all sensibilities another round of consultation at this point, instead of focusing our discussion on a particular proposal.

DR FERNANDO CHEUNG (in Cantonese): *In the main reply and his reply a moment ago, the Secretary has kept emphasizing his intention to formulate a rent adjustment mechanism before considering the issue of rent levels. May I ask the Secretary if it is impossible for PRH rents to be adjusted upwards or downwards under the existing law and mechanism? If not, why did the Secretary keep emphasizing the need to formulate a new rent adjustment mechanism?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): In this respect, we have to look at the part of the existing legislation concerning rent adjustments. In the judgement made by the Court of Final Appeal (CFA) on a case, it is pointed out in essence that no dispute will arise as long as there is no rent review by the HA. Furthermore, it is unnecessary to maintain the median rent-to-income ratio (MRIR) at 10%. However, if rents are to be adjusted upwards, we will be subject to the relevant Ordinance, such that the adjusted rents cannot exceed the MRIR by more than 10%. But, as we all know, the MRIR now is about 15%, that means we cannot increase rents. However, the CFA also made it clear that this is not applicable to rent reductions, though it did not specify the basis on which rents can be reduced. We are concerned that, if rents are reduced without careful consideration, whereas the future mechanism comes up with something different, a lot of unnecessary problems, and even legal proceedings, will be resulted. This explains why I emphasize that holistic consideration is a must. I have made it very clear in my earlier reply the factors to be considered by the rent adjustment mechanism if a holistic approach is adopted. In future, we will first examine whether the existing rent level is reasonable before adjusting it in accordance with the prevailing mechanism and, on the basis of the adjusted level, implement the future new rent adjustment mechanism.

MISS CHAN YUEN-HAN (in Cantonese): *A question about a similar situation, albeit different in content, was raised earlier. In part (b) of the main reply, the*

Secretary said it was considered unnecessary to put forward any new proposal for consultation. But again, he mentioned some procedures in his reply to Mr LEONG just now. I also heard him say it was still too early and it remained uncertain as to what would be decided and whether consultation would be held. I would like to ask the Secretary a question about a policy which involves half of the population of the territory and is employed by the Government to look after the grassroots. Given the Government's intention to adjust the policy, why does the Secretary not consider another round of consultation should a new proposal be raised in future? Should a liberal society say at such an early stage that there are uncertainties?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I did not say that no consultation would be allowed. For instance, I have said that if a proposal is put forward, I will submit it to the Panel on Housing of the Legislative Council. We have, more than once, invited tenants to attend meetings of the Panel on Housing and express their views. This is also a usual channel for collecting public views. I hope many such opportunities will arise in future for collection of views.

MR LEE WING-TAT (in Cantonese): *President, in his earlier supplementary reply to the question raised by Mr Frederick FUNG, the Secretary said that most of the views hope to use household income as a basis for the calculation mechanism. The positive remark made by the Secretary seems to suggest nil objection. Can the Secretary arrive at a figure by backward calculation on this basis? Has the Secretary calculated the possible extent of rent adjustments by working backwards from the previous fiscal year when no rent adjustments have since been made? Can the Secretary inform Honourable colleagues of the result of the calculations if they have been done? This can actually be used as reference for the extent of rent reduction.*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I have not done the calculations myself, as we cannot assume this is the only standard. As I pointed out earlier, we will consider two factors: first, income changes and second, living index. As the factors to be considered by the future mechanism are not entirely certain at the moment, no calculation of the level has been done.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

MR WONG KWOK-HING (in Cantonese): *The rent adjustment mechanism is now being discussed by the Ad Hoc Committee. May I ask the Secretary through the President whether the Government will introduce a rent reduction of 10% according to the law if the mechanism cannot be implemented or a lot of factors have rendered it impossible for the mechanism to be implemented? What measures will be adopted to cope with the situation in the event that the rent adjustment mechanism cannot be implemented?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I will consider it a very serious failure on my part if I cannot convince Members to accept the rent adjustment mechanism we are contemplating at the moment. As Members are aware, the dilemma confronting us at the moment is attributed to the many frustrations brought about by the provisions on how rent reductions can be achieved when the legislation was last amended. Given this problem, I hope Members can, in the spirit of resolving the problem, consider the matter with this approach and mentality when the rent adjustment mechanism is proposed. If Members can act in this way, I am confident that the chances of the mechanism being accepted are very great.

MR WONG KWOK-HING (in Cantonese): *The Secretary has not given us a clear reply as to whether the Government will introduce a rent reduction of 10% according to the law if the rent adjustment mechanism cannot be implemented? He has not answered this point.*

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

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I suppose the situation will continue. This is definitely a hypothetical question. I will normally not answer hypothetical questions. But this is an exception. Should this be the case, the *status quo* can only be maintained with no adjustment. In other words, the rents will remain unchanged.

PRESIDENT (in Cantonese): Second question.

Rent Assistance

2. **MR ALAN LEONG** (in Cantonese): *President, in March this year, the Housing Authority further relaxed the eligibility for rent assistance (RA). In this connection, will the Government inform this Council of:*

- (a) *the current numbers of RA applications being processed and public rental housing (PRH) tenants receiving RA, with a breakdown of the latter by the rate of rent reduction granted;*
- (b) *the estimated number of PRH tenants currently eligible for RA and, among them, the percentage of those who are receiving RA; and*
- (c) *the total number, since the implementation of the RA Scheme, of RA recipient tenants who have been asked to move to units in older-type blocks which charged lower rents?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, public housing tenants in economic distress can seek rent relief through two different channels. First of all, the Government's Comprehensive Social Security Assistance (CSSA) Scheme provides cash allowance to families without income or in need of long-term assistance. In most cases, the rent allowance under CSSA is adequate to cover public housing rent in full.

On the other hand, tenants who are beset with temporary financial hardship and have difficulty in affording normal rents can apply for rent reduction under the Housing Authority's RA Scheme, which is an additional safety net outside CSSA. Tenants are eligible for the Scheme if their rent takes up more than 20% of their income, or if their income is below 60% of the Waiting List income limit. Depending on their actual household income, they may be given 50% or 25% rent reduction. All elderly households are given 50% rental reduction.

It is estimated that about 130 000 public housing tenants are receiving CSSA as at May 2006, while some 13 000 tenants are receiving RA. Together they account for 22% of the total number of PRH households.

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

- (a) As at 5 June 2006, 13 078 tenants were on RA. Of them, 12 717 tenants were given 50% rent reduction and 361 were given 25%. At present, 579 applications are being processed.
- (b) The Housing Department does not keep records on the income of public housing tenants and hence cannot accurately work out the exact number of tenants eligible for RA. Last year, when considering proposed relaxations of the RA Scheme, the Housing Authority made reference to statistics on public housing residents released under the General Household Survey undertaken by the Census and Statistics Department in order to assess the financial implications of the proposals. It was then roughly estimated that about 148 000 tenants would be eligible for RA upon relaxation of the eligibility criteria.
- (c) The RA Scheme is aimed at providing quick relief to help tenants tide over their temporary financial hardship. For non-elderly tenants who still need RA after a continuous period of three years, the Housing Department will discuss with them to see whether it is better for them to move to more affordable flats or apply for CSSA for longer-term financial assistance.

Since introduction of the RA Scheme in 1992, a total of five families had moved to more affordable flats in the same district after receiving RA for three years. Of them, four moved to flats with space provision commensurate with their household size within the same estates. Two of them are still receiving RA. The remaining family moved to a suitable flat in another estate within the same district, and is no longer receiving RA.

MR ALAN LEONG (in Cantonese): *President, I wish to ask a question concerning part (b) of the main reply. The Secretary said that according to the*

statistics on public housing residents released under the General Household Survey undertaken by the Census and Statistics Department, it was roughly estimated that about 148 000 tenants would be eligible according to the new criteria, however, we find that another part of the main reply points out that at present, only some 13 000 tenants representing 10% are receiving RA. May I ask if the Bureau has considered why only 10% of the eligible tenants have applied for RA? Is it due to the lack of publicity or is it because tenants are worried that they will have to move after three years, or for some other reasons?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Perhaps I will first talk about the figures. I have already pointed out in the main reply that we do not keep records of the incomes of public housing tenants. If they wish to apply for RA, we will carry out means tests on them. Since there are no records, we can only make a rough estimate according to the statistics available, so the estimate may not be accurate.

Of course, it is one thing that they are eligible and another that they will apply. Concerning the question on the number of applications, which is on the low side, Members will perhaps query if there is sufficient publicity. However, we have in fact given this Scheme a great deal of publicity and also distributed information leaflets to all tenants setting out in detail the eligibility criteria and in what circumstances an application can be made, as well as answering some frequently asked questions, so that tenants may know how their individual position is like. It is our practice to distribute leaflets household by household in the housing estates concerned, so tenants should have the opportunity to get hold of such information.

In addition, perhaps I can put it this way, that is, our tenants do not abuse public resources. If they do not think it necessary, they will not apply for RA. I have already pointed out in the main reply that our safety net is very wide. Among the existing public housing tenants, 22% have already been given a certain degree of protection by this safety net, so that they can meet their daily needs. Therefore, the actual situation can be reflected by this fact.

DR KWOK KA-KI (in Cantonese): *The Secretary said in part (c) of the main reply that under the RA Scheme, arrangements were made for five families offered assistance to move. May I ask the Secretary to clarify if these five cases*

include households receiving CSSA? If yes, what are the reasons? If not, why not?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): These five families relate to "the total number, since the implementation of the RA Scheme, of RA recipient tenants who have been asked to move to units in older-type blocks which charged lower rents", as asked by Mr Alan LEONG in his main question. Perhaps let me explain a little. Under this Scheme, if tenants have been receiving assistance for a continuous period of three years and want to continue to apply for RA, we will request them to consider moving to units charging lower rents. This is because we do not want to see a mismatch of resources. Tenants must consider their financial means. We do not want tenants to make applications or accept our tenancy agreement without due consideration in order to rent larger units that they cannot afford, so we give tenants a period of three years. If they still have problems after three years, we will then assist them in moving to smaller units.

Since 1992, a total of five families had to accept this arrangement. Against the backdrop of so many years and so many tenants, this is a very small figure and I think it reflects the fact that the Scheme has served its purpose, that is, we can assist tenants having temporary difficulties. In addition, there has been no large-scale abuse by them. That there were only five cases proves that the Scheme is actually quite successful.

DR KWOK KA-KI (in Cantonese): *President, the Secretary did not answer my supplementary. I only asked him to clarify, so there is no need for him to answer in such detail. I wish the Secretary to clarify if these five cases in which the tenants were requested to move include any tenant who had not applied for CSSA but who subsequently applied for it?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I cannot quite get the thrust of this supplementary. Frankly speaking, I am not too clear about the details of these five cases. Maybe I will look at them back in the office and see if they have anything to do with CSSA. (Appendix I).

MISS TAM HEUNG-MAN (in Cantonese): *President, the Secretary said in the main reply that the authorities had conducted a review. May I ask the Government if it will consider conducting another review of the RA Scheme, including increasing the amount of RA or its proportion to the total amount of rent, that is, to consider increasing the amount of financial assistance for families receiving CSSA or increasing the quota, so that more people can.....since in the main reply the Secretary said that only some 13 000 public housing tenants had been benefited but there were nearly 140 000 eligible households, can the Secretary raise the number of applications so that more people can enjoy the benefits?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, I cannot grasp the thrust of this supplementary. Can I ask the President to.....

PRESIDENT (in Cantonese): Yes. Miss TAM, please repeat your supplementary clearly.

MISS TAM HEUNG-MAN (in Cantonese): *I wish to ask the Secretary if a review can be conducted of the system to study when the RA will be raised or the proportion of RA to the total amount of rent will be raised, that is, of the reviews to be conducted by the Secretary, when will this review be conducted? At present, there are about 140 000 eligible tenants but only some 13 000 tenants can now receive RA. Can the Secretary review what method can be adopted to raise the number of tenants applying for RA, that is, to raise the number of tenants from 13 000?*

PRESIDENT (in Cantonese): Miss TAM Heung-man, does your supplementary seek to ask the Secretary if the existing RA Scheme will be reviewed? If it will be, whether the aim will be to raise the number of tenants benefiting from the scheme, right?

MISS TAM HEUNG-MAN (in Cantonese): Yes. Thank you, President.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Perhaps I did not make it very clear in the main reply. In fact, we completed the review only in February this year and that is why the criteria have been relaxed to the present extent. At present, we have received new applications and over 500 applications are still being processed. I think this is the result of relaxing the criteria. Therefore, my reply is that since we completed the review only in February and are working in accordance with the new arrangement, I think it is perhaps too early to conduct another review.

DR FERNANDO CHEUNG (in Cantonese): *The Secretary also said in the main reply that tenants who have applied for RA for a continuous period of three years will have to move to other units. In fact, tenants who have to apply for RA are having a difficult time, that is, apart from financial difficulties, they often have to cope with other social factors and problems in family relationships. If tenants are required to move to a unit charging lower rent after three years, it is most likely that this will add to their difficulties, for example, they have to adapt anew as a result of having to leave their community. May I ask the Secretary if, instead of forcing these people to move, other factors will be taken into consideration before a request to move to other units is made?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): In fact, I have already pointed out in the main reply that the Scheme is aimed at providing quick relief to help tenants tide over their temporary financial hardship, so the period is limited to three years. If tenants encounter financial difficulties for an extended period of time, there are also CSSA and other ways to help them solve their problems. Therefore, consideration is made at two different levels and the RA is temporary in nature.

In part (c) of the main question, Mr Alan LEONG asked about the number of families that have been asked to move since the implementation of the RA Scheme. I have already pointed out in reply that since 1992, in fact there have been only five cases in which tenants were asked to move, so this figure is very low. Therefore, I can say that to help tenants cope with temporary financial hardships with the provision of RA for three years is in fact an appropriate period of time. Judging from the foregoing figures, most of the tenants could solve their problems within that period of time, therefore, in so many years, relocation to other units was called for only in five cases. Moreover, I have

already pointed out in my reply just now that of these five cases, four tenants were allocated units in the same housing estate. It can thus be seen that we did pay attention even to the detailed arrangements of their lives.

MR LEE WING-TAT (in Cantonese): *President, not to mention cases of elderly people receiving RA, families in general, in particular, those that just manage to stay above the level for receiving CSSA — that is, three-member or four-member families earning between \$10,000 to \$12,000 or \$13,000 monthly — have to pay rents at 18% to 19.9% of their income. The Secretary has to know that they do not receive any RA.*

I have already asked the Secretary many times how this problem should be dealt with. For example, we estimate that if a four-member family earning \$10,000 monthly has to pay \$2,000 in rent, the rent probably accounts for 19.9% of its income. Why can these people not receive any assistance? Will the Secretary find a solution to this problem? Even if it is a short-term solution, the Secretary still has to think of one.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): In any system, there is always a threshold and it is inevitable that there will be cases that sit astride or almost astride the threshold. Nevertheless, first, we have to understand that the rents of public housing are in fact already far cheaper than those in the market. At present, the monthly rents of public housing units are between \$252 to \$3,810 and a rent as high as \$3,810 is already an extreme case and it means brand new units in large housing estates. Generally speaking, about 62% of the tenants pay less than \$1,500 monthly in rent, therefore, overall, it reflects the fact that the level of rent borne by these households is not too heavy.

Of course, I do not dispute that there may be households in difficulty that sit astride the threshold. If they have special needs, I think the Social Welfare Department (SWD) can consider if they have special circumstances, then assist them in solving the problems with the special allowances of the SWD or other methods. Given the resources of the Housing Authority, if it keeps lowering the rents, I think it will have a great impact on us. Therefore, when conducting the review in February this year, we also considered these issues. In the end, it was decided that the Scheme should be relaxed to the existing extent. Perhaps

when we have an opportunity to conduct another review later, we will consider this question again.

MR LEE WING-TAT (in Cantonese): *The Secretary did not answer my supplementary, moreover, he has misunderstood it. I have made it clear that those people hold jobs and have not applied for CSSA. Moreover, as a lot of people know, these people live in old buildings, not public housing units charging a rent of \$3,500. They may be living in public housing units charging rents of \$1,500 to \$1,600 but the rent accounts for 19.9% of their income. Does the Secretary not think that he has to do something about this problem? This is what I asked him just now.*

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

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, in that case, their income is of course very low. On this issue, we have to see if the SWD can offer any assistance. I do not have anything else to add here.

PRESIDENT (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary.

MR FREDERICK FUNG (in Cantonese): *President, I wish to ask a question on part (c) of the main reply. In fact, it so happened that I discussed this issue with a senior official of directorate grade in the Housing Department a month ago. There are two reasons for the some 13 000 tenants receiving RA not having been asked to move. The first is that there are in fact not enough units in old buildings in the same district the floor area of which is commensurate with the sizes of these families, that is, if these 13 000 families are required to move after three years, there are in fact not an additional 13 000 units in the same district. As regards the second reason, after tenants have received RA for three years in a row, they only have to stop receiving RA for three months before making another application and the legislation on moving will not apply to them. Even senior*

officials are aware of this. However, as far as I know, a lot of such residents are concerned about the legislation on relocation to another unit because they do not know how to exploit such policy loopholes, whereas senior officials do.

Since even senior officials know that although the legislation on moving after three years is very menacing but is useless, will the Secretary consider repealing this policy requiring tenants to move if they apply for RA again after receiving it for three years?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I think Mr FUNG has already said clearly that this policy has not given rise to any problem during its long period of operation. Of course, we have our considerations on this matter. If we relax the restrictions, can we cope with the problems that may occur in other areas? We have to consider this very carefully. I have said that in February this year, we had considered all such problems and came to the view that no further relaxation is advisable at present.

PRESIDENT (in Cantonese): Third question.

Noise from Performers' Loudspeakers

3. **MRS SELINA CHOW** (in Cantonese): *President, it has been reported that some amateur Chinese opera performers stage their performances at Tuen Mun Park from time to time and attract crowds of onlookers. However, the noise from their loudspeakers causes nuisance to some nearby residents. Since the middle of last year, the Leisure and Cultural Services Department (LCSD) has received a number of complaints about the noise from the performers' loudspeakers. On several occasions, when the LCSD officers handled the complaints at the scene, conflicts with the performers and the onlookers occurred. In this connection, will the Government inform this Council:*

- (a) *of the total number of complaints received by the LCSD since the middle of last year about the noise generated by the Chinese opera performers using loudspeakers at Tuen Mun Park; and how such complaints are normally handled;*

- (b) *whether the LCSD has conducted any on-site investigations and assessments at Tuen Mun Park in response to these complaints and look for other venues outside Tuen Mun Park for long-term use by the Chinese opera performers; and*
- (c) *whether the gathering of Chinese opera performers and enthusiasts at Tuen Mun Park is due to the authorities' failure to provide sufficient and suitable venues in other parts of Tuen Mun that are convenient to these performances?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the following is my consolidated reply to the three parts of the question.

In handling the complaints lodged by the residents near Tuen Mun Park about noise nuisance arising from the use of loudspeakers by music performers in the Park, the Government first adopts an educational and advisory approach and will take enforcement action when necessary for a warning effect. However, I would like to point out that the Government welcomes the holding of leisure activities, including music playing and singing, by members of the public in parks. At the same time, we also hope that the users can show mutual respect to avoid causing nuisance to other users or people (including the nearby residents) by these activities.

Since August 2003, some music performance enthusiasts have been carrying out activities with simple Chinese musical instruments at the Amphitheatre of Tuen Mun Park every afternoon. There were not many onlookers at that time and no excessive noise was generated from the activities. However, by mid-2004, the numbers of music performers and musical instruments used for their performances were gradually on the rise. Some music performing groups began to carry out their activities at locations outside the Amphitheatre of the Park. The number of onlookers increased from about a dozen to over 100.

As the Amphitheatre is the only designated performing venue of the Park, the LCSD began to require all music performing groups holding activities in the Amphitheatre to make applications and observe the provisions on noise control with effect from December 2004. The staff of the LCSD will measure whether the noise generated by the music performing groups exceeds the sound limit of

70 dB. If the limit is exceeded, the LCSD will issue warning letters to the performing groups concerned. In case of repeated offences, it will cancel all their bookings for the use of the Amphitheatre previously approved.

Although these measures were effective in the beginning, the number of performers began to rise significantly starting from August and September 2005. Also, they conducted their activities at locations outside the Amphitheatre with loudspeakers to enhance the volume in order to attract more onlookers. As a result, the residents of the housing flats near Tuen Mun Park lodged complaints about the noise nuisance generated by these activities. The number of complaints increased from 89 in 2004 to 205 in 2005.

In view of the fact that most of the music performers and the audience in the Park are the elderly, the LCSD considered that educational and publicity measures should first be enhanced to encourage them to exercise self-discipline. Therefore, the LCSD, after consultation with the Leisure and Culture Committee of the Tuen Mun District Council and with its support, decided that from November 2005 onwards the use of loudspeakers was prohibited in all areas of the Park except the Amphitheatre which has been designated for performances. Such measures were implemented on a trial basis for three months. The Department launched extensive publicity of the measures in the Park. The LCSD staff, in conjunction with members of the Tuen Mun District Council, also distributed leaflets in the Park to advise the performing groups to exercise self-discipline and use alternative venues, such as Tin Hau Square, Squash Courts of Tuen Mun Swimming Pool and community halls for their activities. Furthermore, the LCSD and the law-enforcement authorities concerned also made arrangements for the necessary enforcement actions.

Unfortunately, the trial measures were not as effective as expected. For the four months between November 2005 and February 2006, the Department had received 418 complaints on the issue. In the light of the aggravated noise problem and ineffectiveness of the educational and advisory measures, the LCSD after consultation with the Leisure and Culture Committee of the Tuen Mun District Council and with its support, carried out a joint operation with the Environment Protection Department (EPD) and the police to enforce the Noise Control Ordinance in February 2006. Since then, the Park management staff have continued to monitor closely the music performances in the Park and advised people intended to use loudspeakers in the Park to refrain from doing so in order to avoid causing noise nuisance. After the enforcement action and

advice given by our Park management staff in an active manner, most of the performing groups have exercised self-discipline and hence the number of complaints has substantially decreased. Only 17 complaints were received during last month (that is, May).

At the same time, the LCSD has been working actively in the past few months with the "Working Group on Issue Related to Tuen Mun Park" under the Leisure and Culture Committee of the Tuen Mun District Council to study other facilitative measures. Representatives of the performing groups and nearby residents have been invited to attend the meetings of the working group to give their views. After discussions and deliberations among the parties concerned, it has been decided as follows:

- (i) A "Tuen Mun District Cultural and Music Performance Promotion Scheme" will be launched, under which venues will be on hire to interested groups free of charge so as to ease the demands of the performing groups and their supporting audience. These venues include the Squash Courts of Tuen Mun Swimming Pool, Tin Hau Square, Shan King Community Hall and Tuen Mun Town Centre Community Hall. As for Tuen Mun Park, two self-entertainment zones will be set up for group performances apart from the Amphitheatre. However, the performers are not allowed to use loudspeakers to avoid creating noise disturbances. The "Tuen Mun District Cultural and Music Performance Promotion Scheme" will be implemented on a trial basis for three months from 16 June to 17 September and is subject to review depending on the usage of the scheme. The initial response to the promotion scheme is good as the LCSD has received applications from a total of 15 performing groups for use of these venues in June and July. Allocation of venues was made by open balloting on 10 June;
- (ii) Through liaison with the Social Welfare Department and the Tuen Mun District Office of the Home Affairs Department, arrangements will be made for the staff of district elderly community centres to hold service publicity activities at Tuen Mun Park to promote the community activities in the district. The performing groups will also be encouraged through match making to stage performances and showcase their talent on a voluntary basis at the community service units in the district;

- (iii) The LCSD has also arranged a number of entertainment programmes free of charge at Tuen Mun Park to cater for the need of park users;
- (iv) Noise barriers or noise abatement facilities will be installed at the Amphitheatre of Tuen Mun Park to reduce the noise generated from the Amphitheatre and relieve the noise nuisance caused to Kam Wah Garden and the Trend Plaza in the vicinity of the Park.

There are many suitable and convenient performing venues in Tuen Mun district, which include seven community halls/centres, the dancing room, music room and cultural activities hall in Tuen Mun Town Hall, individual squash courts and the activity rooms in indoor recreation centres, and so on. Citizens are welcome to hire such venues for music performance. During last year, local organizations including music performing groups had hired the facilities at Tuen Mun Town Hall, community halls and community centres for over 5 000 sessions. The utilization rate of these venues is, at present, 70% to 90 % on average and there is spare capacity to cater for more hiring by group users.

We appreciate that individual performing groups and some people are more fond of impromptu singing activities on the street. We believe that through the "Tuen Mun District Cultural and Music Performance Promotion Scheme", we can introduce to these people alternative performing venues in the district which are not in the proximity of residential buildings so that their needs can be met without causing noise nuisance to the residents nearby.

Finally, I would like to reiterate that singing and dancing for self-entertainment in parks is not a problem at all provided that no nuisance is caused to other people. However, we must respect each other. While we respect people's right of singing, it is hoped that they will respect other people's right of having peace. Only with mutual respect, can we have a harmonious society.

MRS SELINA CHOW (in Cantonese): *President, it can be seen clearly from the main reply that there is a great demand for performing venues in Tuen Mun Park from both music performing groups and music lovers. Since such a demand has been known for a long time, will the Secretary consider the*

possibility of designating more performance venues in the desired place, that is, Tuen Mun Park, so that those people can still use loudspeakers and there can be adequate professional noise abatement facilities, such that they can continue to stage their performances in Tuen Mun Park?

SECRETARY FOR HOME AFFAIRS (in Cantonese): There are indeed such venues. When it started to receive so many complaints at the end of 2004, the LCSD immediately conducted a review of the leisure and cultural facilities in Tuen Mun Park and designated some areas, regions or self-entertainment zones for music performing groups to stage their performances. However, since the topography of Tuen Mun Park is basin-like and the nearby residential buildings are all situated at higher locations, the park is thus very resonant and all noise will easily travel to the surrounding residential buildings, thus creating noise nuisance. For this reason, although we have designated self-entertainment areas for music groups to stage their performances, we nonetheless will not permit the use of loudspeakers. At the same time, we are conducting active studies in conjunction with the Leisure and Culture Committee under the Tuen Mun District Council, and we are also working with the Architectural Services Department and other government departments to explore ways of reducing the volumes of noise and music as much as possible, with a view to avoiding noise nuisance.

MRS SELINA CHOW (in Cantonese): *President, the Secretary has not answered the central part of my supplementary question. Both music performing groups and their audiences hope that loudspeakers can be used for music performances in Tuen Mun Park. However, the Government is currently unable to meet their demand. Is there any long-term plan to cater for such a need?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I have already explained that the topography of Tuen Mun Park is basin-like, so the use of loudspeakers will turn the whole place very resonant unless the park is reconstructed. But this is a separate issue. For this reason, while we have designated self-entertainment zones for music performing groups, we do not permit the use of loudspeakers. On the other hand, however, we also wish to

cater for their need. Therefore, if people want to use loudspeakers, they must stage their performances indoors. These indoor venues, as I have mentioned, are the Squash Courts of Tuen Mun Swimming Pool, the Community Hall and other places such as Tin Hau Square.

MR LAU WONG-FAT (in Cantonese): *Madam President, since outdoor amateur Chinese opera performances are staged by enthusiasts in many different districts and there are large numbers of onlookers, the popularity of such performances is indeed evident. In order to strike a balance, ensuring that while the people living near to outdoor performance venues will not be affected by noise nuisance, Chinese opera enthusiasts can still have opportunities to entertain themselves as well as others, will the Government consider the idea of designating outdoor performance venues equipped with sound barriers, electricity supply, sheltered stages, lighting and seats for audience at suitable locations in different districts?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): In this connection, I would like to advise that this is precisely our policy. We likewise hope that self-entertainment zones can be designated in the parks or other easily accessible places of all districts, so that people can stage leisure and cultural performances to display their artistic talents. But at the same time, we also hope that the public can exercise self-discipline and avoid causing nuisance to others.

MR ALBERT CHENG (in Cantonese): *I am delighted to hear from the Secretary that in order to meet people's need, some fee-charging venues will be open to performers free of charge. President, may I ask whether it has ever occurred to the Secretary that it is unfair to open venues free of charge to commercial performances that charge admission fees?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, Mr Albert CHENG's supplementary question is a very good one because our venues are currently provided free of charge on condition that there is no admission fee. If an admission fee is charged, we will require payment of rent by the performing group concerned.

MR ALBERT CHENG (in Cantonese): *President, I wish to ask a follow-up.*

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

MR ALBERT CHENG (in Cantonese): *Yes. According to the Secretary, if there is an admission fee, rent payment may be required. But will the payment of rent give any priority to the performing group concerned? Venues are to be provided free of charge, but if it is known that an admission fee*

PRESIDENT (in Cantonese): Mr Albert CHENG, this was not mentioned in your supplementary question just now.

MR ALBERT CHENG (in Cantonese): *Fine. I can drop the question.*

MR CHEUNG HOK-MING (in Cantonese): *It is mentioned in the Secretary's main reply that four improvement measures have been implemented in Tuen Mun Park. In all fairness, it must be pointed out that these measures should be effective. However, the case of Tuen Mun Park is just the tip of the iceberg. This problem is in fact very common, especially in the new towns of the New Territories. For example, Tin Shui Wai Park actually faces a similar problem. Does the Government have any plan to conduct a comprehensive review and put in place some effective improvement measures or policies? If yes, what are the specific details? If not, why not?*

PRESIDENT (in Cantonese): Mr CHEUNG Hok-ming, Mrs Selina CHOW's main question is about Tuen Mun Park, but your supplementary question asks about all parks in the New Territories. I think your supplementary question has gone beyond the scope of the main question. Can you rephrase your supplementary question to make it relevant to the main question?

MR CHEUNG HOK-MING (in Cantonese): *President, I wish to ask the Secretary whether the four measures concerned can be regarded as a new policy meant to improve the facilities at all new towns in Hong Kong.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Honestly, as mentioned by the Honourable Member, the case of Tuen Mun Park may just be the tip of the iceberg. Tuen Mun Park was completed in 1982, when all the housing blocks to the East of it now were not yet constructed — Tuen Mun Time Square and Kam Wah Garden were completed in 1985. Tuen Mun Park, designed by the then Regional Council, was completed before all these buildings, and we must not forget the very prosperous development of Tuen Mun over the past 10 to 20 years. As a result, how can it be possible to tackle this current social problem with the facilities designed in the past? There is thus all the more reason for us to reconsider the whole problem from the perspective of long-term planning. The Government is presently handling this problem.

MR ALBERT HO (in Cantonese): *As mentioned by the Secretary just now, a total ban on loudspeakers is currently imposed as a means of regulation in Tuen Mun Park. Performers may sing and dance. But, as explained by the Secretary a moment ago, if they use any loudspeakers, the noise generated will definitely affect nearby residents due to the topography of the park, in which case there will certainly be complaints. However, will any consideration be given to whether or not there is genuine noise nuisance and also to the level that is supposed to result in noise nuisance? Is it always and at all times an offence to use loudspeakers? May I ask the Secretary whether there are any objective criteria to differentiate suitable or low noise levels from noise nuisance? There should not be any problem with dancing and singing to some sort of music. There is no need to impose a total ban, outlawing the use of loudspeakers in the park at all times.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): It is not true that loudspeakers are banned at all locations in Tuen Mun Park. At some locations, the use of loudspeakers is still allowed. The Amphitheatre is one example. But even at such locations, the noise level of loudspeakers is not allowed to exceed 70 dB, and the park management staff of the LCSO will measure the noise generated from time to time. I am no expert in noise, so I have consulted the Electrical and Mechanical Services Department (EMSD) and the EPD.

Both Departments are of the view that regardless of their sizes, loudspeakers will invariably cause noise nuisance. But when music performers are enjoying their own singing, they may not realize that the noise generated will affect other people.

Since the LCSD started to strictly enforce the banning of loudspeakers at all locations in Tuen Mun Park other than the Amphitheatre, the number of noise nuisance complaints has diminished greatly. This testifies to the view of EMSD and EPD experts that whether their loudspeakers are big or small, people will tend to raise the volume of music without their realizing it, especially when there are more than one music performing groups. Since they want to attract a greater audience, they will incessantly increase the volumes of their loudspeakers. We must therefore also pay attention to this.

MR ALBERT HO (in Cantonese): *President, the Secretary has not answered the part of my supplementary question on whether there are any objective criteria. Will the use of loudspeakers necessarily result in noise nuisance? It seems that the Secretary has not answered this question.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Not necessarily. But the use of loudspeakers will very often cause noise nuisance.

PRESIDENT (in Cantonese): We have spent more than 20 minutes on this question. We shall now proceed to the fourth oral question.

The Member who is supposed to ask this question should be Mr Albert CHAN. But since he is unable to attend this meeting due to other commitments, he has requested Mr LEUNG Kwok-hung to ask the question on his behalf. However, even Mr LEUNG Kwok-hung is not present now. Staff of the Secretariat have been trying to locate him, but he cannot be found in the Legislative Council Building. Consequently, in accordance with Rules 26(6A) and (6B) of the Rules of Procedure, this question shall be asked by Mr Fred LI.

Illegal Dumping of Construction Waste

4. **MR FRED LI** (in Cantonese): *President, recently, I have received complaints from members of the public that, since the implementation of the*

construction waste disposal charging scheme on 20 January this year, illegal dumping of construction waste has taken place in many streets, rear lanes and agricultural lands. In this connection, will the Government inform this Council:

- (a) of the number of complaints received by the authorities each month about illegal dumping of construction waste since the implementation of the above scheme, the number of cases of illegal dumping of construction waste found during inspections, as well as the respective numbers of such complaints and cases in the same period last year;*
- (b) of the number of prosecutions instituted in respect of the above illegal dumping cases, and the quantity of construction waste illegally dumped since the implementation of the scheme; and*
- (c) whether there are measures to crack down on illegal dumping of construction waste; if so, of the details of the measures; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): President,

- (a) Since the implementation of the construction waste disposal charging scheme on 20 January 2006 and up to 31 May 2006, the Environmental Protection Department (EPD) received 508 complaints on the flytipping of construction waste. In the same period last year, the EPD received 101 such complaints. The monthly figures are as follows:

<i>Number of complaints of flytipping of construction waste received by the EPD</i>			
<i>2005</i>		<i>2006</i>	
20January to 31 January	3	20January to 31 January	11
February	16	February	41
March	18	March	148
April	35	April	124
May	29	May	184
Total	101	Total	508

In order to deter the illegal acts of flytipping of construction waste, the EPD would conduct regular inspections or ambush operations. During these inspections and ambush operations carried out between 20 January and 31 May this year, the EPD staff detected a total of 69 cases of flytipping of construction waste. The figures for the respective months are as follows:

<i>Cases of flytipping of construction waste detected by the EPD during inspections</i>	
January 2006	10
February 2006	3
March 2006	13
April 2006	16
May 2006	27
Total	69

Before the implementation of the construction waste disposal charging scheme, the EPD did not classify the type of waste being flytipped. As a result, no comparable data could be provided for the same period in 2005.

- (b) During the same period, the Government initiated five prosecutions and issued four fixed penalty notices as a result of the enforcement actions taken. The enforcement officers could only take prosecution action if they could collect sufficient evidence at the scene; including witnessing and proving the suspect has disposed of the waste at a public place or at a private place without authorization from the owner. The number of cases detected is therefore much higher than the number of prosecution cases or fixed penalty notices issued.

Since the implementation of the construction waste disposal charging scheme on 20 January 2006 and up to 31 May 2006, a total of some 3 000 tonnes of flytipped construction waste, an average of about 23 tonnes per day, were collected by various government departments while an average of about 21 000 tonnes per day of materials were disposed of at the EPD's landfills, construction waste sorting facilities and public fill banks of the Civil Engineering and Development Department. The quantity of flytipped construction

waste only accounts to 0.1% of the total quantity of construction waste handled by the Government.

- (c) Cracking down on flytipping of waste is one of the key enforcement roles of the EPD. In this regard, the EPD regularly updates the intelligence on flytipping black spots and deploys manpower to patrol these black spots. Apart from setting up a telephone hotline to encourage the public to report and gather information on flytipping cases, the EPD would also exchange intelligence with the police, the Food and Environmental Hygiene Department (FEHD) and other departments in order to act swiftly against any flytipping activities.

During the period from 20 January to 31 May 2006, the EPD carried out some 1 700 inspections and ambush operations at flytipping black spots and reported locations. As a result of these enforcement actions, four prosecutions were initiated and four fixed penalty notices issued, while the FEHD lodged one prosecution during the same period.

Of the 508 complaints received by the EPD regarding the flytipping of construction waste, the majority (483 cases) was related to flytipping of construction waste near buildings or on kerbside in the urban areas. In 178 cases, the construction waste had been removed before the EPD staff arrived for inspection. The waste in these cases could probably be generated from renovation works nearby and considered as "temporary stock piling" rather than "illegal flytipping". The data also indicated that there was no significant increase in the number of flytipping black spots on rural/agricultural land, nor a worsening trend. Due to the above reasons, the EPD would take proactive measures and to step up enforcement against the flytipping of renovation waste in the urban areas. The EPD has issued guidelines to the front-line staff reminding them to be on the alert for any renovation works being carried out in buildings, especially in the proximity of flytipping black spots during their daily field work and inspections. Should any renovation works be identified, the property owner, Incorporation of Owners or property management office of the building/estate should be contacted and reminded to pay close

attention to and keep records for the proper disposal of construction waste arising from these renovation works. The EPD staff would also make return visits to the same premises to ensure that the responsible party has disposed of their waste properly.

For new housing estates or buildings, the EPD staff would proactively approach the property management offices briefing them about the potential pollution problems arising from renovation works and the possible solutions/prevention methods, particularly the proper disposal of construction waste, and also providing them with the pollution control publicity materials produced by the EPD.

MR FRED LI (in Cantonese): *President, according to the main reply given by the Government, since the implementation of the new construction waste disposal charging scheme, the number of complaints over the past five months on the flytipping of construction waste has increased by more than four times compared to the same period last year. Part (b) of the main reply outlines the difficulties of enforcement, that is, the offender must be caught red-handed before prosecutions can be made and the penalty for such offence is only the issue of fixed penalty notices, that is, of \$1,500 each. If there are so many difficulties in enforcement and since the number of complaints received has surged by such a great rate, will the Government undertake a full-scale review of the penalties so that a deterrent effect can be achieved and crack down on those people running the risk?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): First of all, I would like to make a brief explanation. A rise in the number of complaints is attributable to a number of reasons. One of them is that with the implementation of the charging scheme, people started flytipping construction waste. Another reason is that since the implementation of the law on the construction waste charging scheme, the great deal of publicity efforts made during the period have led to greater public concern for the issue and as a result, the number of complaints has surged. This is well within our expectations. As to whether the penalty is sufficient or not, if the FEHD invokes the relevant laws on hygiene and waste disposal, the penalty would be a fine of \$1,500. But if the law on the disposal of construction waste is invoked, the maximum fine shall be \$200,000 and six months' imprisonment. The

penalties are indeed very stiff. Of course, this will depend on how the Judge will hand down the sentence.

MR JAMES TIEN (in Cantonese): *President, I also think that the problem is very serious. The Government in part (c) of the main reply points out that of the 1 700 inspections and ambush operations carried out, only four prosecutions were made. Part (b) of the main reply mentions that the enforcement officers could only take prosecution action if they could collect sufficient evidence at the scene, including witnessing and proving the suspect has disposed of the waste without authorization. This is where the problem lies. Has the Government ever considered whether or not legislative amendment is required? This is because it is very difficult to prove. People will get on their vehicles and drive away once they have dumped the waste. If an eye-witness is needed and evidence is to be collected, not much can be done about it. Of the some 1 000 cases, only four prosecutions can be made. This would not help strong governance either. Will the Government consider amending this law?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): All laws on environmental protection share such a problem and that is, the suspect must be caught in the act, that is to say, red-handed. It is never easy to do so. We discussed this problem before and in the course of taking enforcement actions, we have to look at the proportion as well. For example, if 21 000 tonnes of waste is collected every day and flytipping only takes up 0.1%, in such circumstances, it can be said that the existing law is effective to a certain extent.

As to whether or not amendments should be made to the law, I discussed the issue with a few Members when the relevant Bill was deliberated. Environmental protection laws in foreign countries are much more stringent and things are quite different when it comes to enforcement. I am no lawyer but I have talked with some lawyers and they pointed out that a suspect did not have to be caught red-handed before an arrest could be made. The onus of proof would fall on the owner of the article in question. If an article is found in the heap of waste that can be proved to belong to the owner of the flat in question and if he has no proof showing that the waste from renovation works in his flat has been sent to the landfill in a lawful manner, and if he does not possess a receipt from

the landfill showing that the waste has been disposed of in a lawful manner, that doubt will be cast on the owner. Despite the view of many lawyers that this is against common law, it is practised in the United States. I think with the passage of time and as more experience is gained and if the entire community is convinced that we must take enforcement actions in environmental protection matters, then we can think about this practice.

MR SIN CHUNG-KAI (in Cantonese): *President, at a Committee meeting held yesterday we also discussed the problem of illegal dumping of construction waste. Miss CHOY So-yuk is the Chairman of the Committee and she was also present. I made a suggestion which was related to this problem. I do not know if the Government would consider it. My suggestion is on whether or not the Government will amend the regulations regarding the vehicles concerned, such as requiring all vehicles transporting construction waste display a telephone number for complaints. If the public has any query about waste disposal carried out by that vehicle, he or she can dial the telephone number to lodge a complaint. This is like the case with rubbish bins displaying the telephone number of the FEHD for complaints by the public and it would be helpful to enhancing public monitoring of this type of vehicles. Does the Government think this practice can be adopted?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I am very grateful to Mr SIN for his suggestion. He hopes that everyone in Hong Kong will take part in the effort and help monitor the dump trucks and make sure that air pollution will not be caused in the course of transit. We have tried many methods, including providing in the law to require workers to seal the tipper of the truck when they leave the site. As to whether or not they will stop the truck midway and open the tipper deliberately, at that time some people said that there was no reason for them to do so. If such a thing really happens, we must enforce the law.

With respect to the suggestion made by Mr SIN Chung-kai, we would discuss it with the trade to see if a complaint hotline can be affixed to these vehicles. We may need to discuss with the EPD to see whether or not dump trucks will need to install detectors in addition to those smoke detectors for exhaust fumes. I think these can be considered.

MS EMILY LAU (in Cantonese): *President, the increase in complaint cases is really shocking. As compared to the same period last year, figures for the first five months of this year have increased by more than five times and it is really worrying. Now the law has come into effect and people start flytipping waste everywhere. May I ask the Secretary if a discussion can be held with the trade? The Secretary has just mentioned the trade. Do people in the trade have some sort of organization? Could the Secretary hold a meeting with them and ask them to exercise self-discipline? Members have suggested imposing heavier penalties and I agree to this. However, with respect to enhancing the standards in the trade, can the Government do something more?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Under the new scheme, registration is required of the trade. As the contractors for transportation are different from the contractors for renovation works, so we have reached an agreement with these two trades. In the process of registration, we have talked with members of the trade who are willing to register. As for the small decoration companies which Ms LAU has mentioned, they do not form a trade of their own and there is no way we can organize them and launch publicity efforts among them.

As there is public concern about the issue, so there has been an increase in the number of complaints. We need to see how the small decoration companies will go about solving this problem. The waste produced from the renovation works they undertake is quite small in amount, but the amount of waste sent to the landfills is measured in tonnes. So it may be due to the fact that they have not yet collected waste up to a certain amount that it is not sent to the landfills. They have no place to put such waste. Another problem is that the tippers we see lying about on the streets in fact belong to a new trade. However, as these green tippers are obstructing public access, this would not work. It looks we have to discuss with the Lands Department on the provision of facilities for the collection of construction waste. This will solve the problem in quantity.

As for the small decoration companies, our targets were actually the large companies when we passed this law. Members can see that 99.9% of the waste dumped is lawful and there is only 0.1% which is not. We will deal with this step by step.

MISS CHOY SO-YUK (in Cantonese): *President, illegal dumping is a nuisance to many people and some of them even have to pay from their own pockets to clear up the waste dumped at their doorsteps. The greatest problem for them is that they do not know how to report such cases. More importantly, often even when photographs are taken and there are photographs of the licence plates of the vehicles as well as those of the vehicles, no reporting is possible. May I ask the Secretary if consideration will be given to amending the law? Some Members have pointed out that the vehicles may be required to display a hotline for reporting complaints. Moreover, if reporting is possible and evidence is admitted when there are photographs and witnesses, this will help the public address the problem.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): We know that problems are bound to arise in enforcement. But as I have said, 99.9% of the construction waste disposed of at the landfills is lawful, but because the 0.1% will be a nuisance to the public, so we will handle it. If the public is willing to act as a third party witness and if he or she has photographs that will prove who has disposed of the waste, these can be admitted as evidence by the Court. We will step up publicity in this respect in the hope that more people will take part to help us make the prosecutions successful.

MR PATRICK LAU (in Cantonese): *President, the Secretary has just mentioned that some large tippers from the dump trucks are placed on the streets to collect construction waste. In this respect, will the Government require applications for such placement of tippers? In addition, I hope very much that the decoration companies can use nylon sheets or similar materials to cover up the waste in order to minimize dust in the air. May I ask the Secretary what should be done to deal with this? This is actually a good measure.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, with respect to the tippers on the streets, if the decoration companies are willing to apply to the Lands Department, we can add in many terms and conditions. But the biggest problem now is that they simply do not make any application at all and many of them are illegally placed. Our Department is trying to solve this problem.

PRESIDENT (in Cantonese): We have spent more than 20 minutes on this question. Last supplementary question.

MR LAU KONG-WAH (in Cantonese): *President, although the Secretary has reiterated a number of times that only 0.1% of the dumping is illegal, this is still a nuisance to the public. The Secretary in her main reply appeals to the public or encourage them to report on flytipping, but as far as I know, many people would have to wait a very long time, sometimes even a few days, after they have made a report before the departments take any action. Then things will be too late. Therefore, could the Secretary make some service pledge so that it would take just a very short time after some civic-minded people have reported flytipping that the departments will investigate and respond? Otherwise, the public would only get disappointed.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I know that waste from renovation works may only be placed on the streets for a very short period of time or just temporarily. I would review the existing procedures in the department on matters like how long it would take to make preparations after receiving a complaint and the number of people who will be assigned to form action squads, and so on. Thanks, Mr LAU, for raising this question.

MR LAU KONG-WAH (in Cantonese): *The Secretary has not answered my supplementary question. Although she says that a review would be conducted, my question is on whether or not the Government would pledge to make appropriate responses within a short time.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): What I would review is what length of response time should be regarded as long or short and what would be considered a practicable time.

PRESIDENT (in Cantonese): Fifth question.

Dual Elections by Universal Suffrage

5. **MS EMILY LAU** (in Cantonese): *President, concerning the expeditious implementation of the election of the Chief Executive and all Members of the Legislative Council by universal suffrage (dual elections by universal suffrage), will the executive authorities inform this Council:*

- (a) *whether the fact that the Chief Executive and the Secretaries of Departments and Directors of Bureaux repeatedly call Members of this Council who support the expeditious implementation of dual elections by universal suffrage as "the opposition" is due to their opposing the motions on constitutional reform put forth last December by the authorities; given that in democratic countries and places, "the opposition" refers to those political parties which are not in power following defeat in an election, whether the authorities have reviewed if it is appropriate to call these Members as "the opposition", when they obtained 60% of the votes in the last Legislative Council elections;*
- (b) *whether they have assessed if the Chief Executive, who is not elected by universal suffrage and may not be a member of any political party, can exercise effective governance, regardless of how high his support rates are in opinion polls; and*
- (c) *as a recent opinion poll has indicated that more than two thirds of the members of the public are supportive of the expeditious implementation of dual elections by universal suffrage, whether the authorities will lobby those who are resistant to that for a change of attitude?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President,

- (a) The Chief Executive has already clearly expressed his views on the term "opposition camp" in the previous two Legislative Council Question and Answer Sessions.

With regard to constitutional development, in December last year, the opposition camp rejected the proposed package for the electoral methods for 2007 and 2008 put forth by the Government. According to different opinion polls, more than half of the population supported the package before it was put to vote in the Legislative Council last year. Also, according to a recent poll conducted by the Hong Kong Baptist University, 50% of the Hong Kong public considered that the opposition camp was responsible for the failure of the package to get passed in the Legislative Council.

Although it is a fact, as stated by Ms Emily LAU, that Members from the opposition camp obtained 60% of the votes in the last Legislative Council election, it is also a fact that in opposing the Government's package last year, the opposition camp has undoubtedly acted against public opinions, and has caused Hong Kong to miss an opportunity to achieve more democracy in 2007 and 2008.

- (b) According to the design of the Basic Law, the political structure in Hong Kong is basically an executive-led system headed by the Chief Executive. According to the Basic Law, the Chief Executive shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region (SAR). The Chief Executive is the head of the SAR. He also leads the SAR Government. The Chief Executive is responsible for implementing the Basic Law, ensuring that the principle of "one country, two systems" is fully implemented in Hong Kong, and developing and implementing the systems and policies of the SAR. To meet these requirements, an executive-led system must be implemented.

The respective powers and responsibilities of the executive authorities and the legislature are clearly prescribed in the Basic Law. Under the spirit of the Basic Law, the relationship between the executive authorities and the legislature is one of mutual regulation and co-ordination. Bills and budgets involving public expenditures, political structure and government operation have to be put forth by the Government, and passed by Legislative Council.

In formulating and implementing policies, the executive authorities must take full account of public opinions to ensure that policies are moderate, reasonable and consistent with our objectives. On this basis, the executive authorities have been supporting the work of the legislature as far as possible, so as to jointly serve the community. The SAR Government will continue to maintain close liaison with Legislative Council Members of different political parties, as well as independent Members, to foster co-operation and solicit their support, with a view to forging broad consensus on issues and policies of importance to the community and bringing about effective governance.

- (c) Both the Central Authorities and the SAR Government are fully alive to the community's aspirations on universal suffrage. The ultimate aim of attaining universal suffrage is also recognized by all parties.

The Chief Executive has tasked the Commission on Strategic Development to discuss the issue of constitutional development. Members of the Commission are drawn from a broad cross section of the community, including professionals, academics, businessmen, members of different political parties, Legislative Council Members, as well as labour and media personalities. The Commission will commence discussion in July on possible models for electing the Chief Executive and Legislative Council by universal suffrage. It aims to draw conclusions on the discussions by early 2007.

We must understand that constitutional development in Hong Kong must be made on the basis of the SAR's constitutional arrangements. One of the important requirements is that progress on constitutional development is dependent on whether a consensus could be achieved among the Central Authorities, the SAR Government, the Legislative Council, and different sectors of the community. Therefore, different sectors of the community must be prepared to accept a proposal which can meet the interests of different sectors of society, if there is to be hope of achieving progress on constitutional development.

MS EMILY LAU (in Cantonese): *President, in the main reply the Secretary also admitted that members of the "opposition camp", or rather the "democratic camp" as we would call it, obtained 60% of the votes in the last Legislative Council election. This is a fact, and as I also mentioned in my main question, compared with other democratic or civilized places, those who have obtained 60% of the votes would have become the ruling camp.*

However, the Secretary referred to us as the "opposition camp". This will give the impression that we are the minority. That is why I asked the Secretary whether he would review the propriety of addressing us in such a way. It is because this is very misleading, especially to people who come from other places, and even the local people will be misled. Therefore, I wish to ask the Secretary this once again. Even though he has called people who put up opposition once the "opposition camp", these people are still in the majority and if a civilized system is in place in Hong Kong, we would have become the ruling camp. Is that right?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, concerning the supplementary question asked by Ms Emily LAU, in the election back in September 2004, political parties and groupings in the "opposition camp" and other independent Members did obtain 60% of the votes, and they also obtained 18 seats under the proportional representation system in direct geographical constituency elections. This is consistent with the principle of proportional representation and the relevant arrangements.

Under the arrangement of "one country, two systems", the Legislative Council and the Chief Executive in Hong Kong are elected by two different electoral systems under the Basic Law. With regard to the method for electing Members of the Legislative Council, apart from direct geographical constituency elections, there are also functional constituency elections. Therefore, the current composition of the Legislative Council has already looked after the interests of various strata and is consistent with the principle of balanced participation.

PRESIDENT (in Cantonese): A total of 11 Members would like to ask supplementary questions. Members who have the chance to ask questions please be as concise as possible, so that more Members can ask theirs.

MR CHIM PUI-CHUNG (in Cantonese): *President, in part (b) of the main reply the Secretary said that "in formulating and implementing policies, the executive authorities must take full account of public opinions to ensure that policies are moderate, reasonable and consistent with our objectives". My question to the Government is: Which part of public opinions did he refer to? Which department's opinions will be taken into account by the Government and carry legal effect? If the Government does not explain this, it would give the impression that only those opinions which are favourable to the Government are considered public opinions, while those which are unfavourable to the Government are mere trivialities.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, Mr CHIM Pui-chung's supplementary question is a very important one.

In this open and pluralistic society of Hong Kong, the various government bureaux and departments are working hard every day to keep tabs on public opinions. There are many different channels for expression of public opinions. They can be expressed through the media, through Members of this Council in this Chamber, and in opinion polls conducted by various academic bodies and other organizations. All these carry reference value.

On the part of the Government, it is necessary for us to maintain contact with various industries, and organizations and individuals in various trades and sectors, and we have also been doing this constantly. Therefore, keeping tabs on the pulse of society is a very important part of administration nowadays.

MR RONNY TONG (in Cantonese): *President, the Secretary actually did not answer part (b) of the main question properly.*

In part (b) of the main reply the Secretary mentioned many issues relating to the Basic Law. However, the Chief Executive must not have any political affiliation, and this is provided for in the laws of Hong Kong. I would like to ask the Secretary this: If the Chief Executive can have political affiliation, and if his political party won the majority support of Hong Kong people in an election, does he agree that this would enhance the credibility of the Chief Executive?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, insofar as the existing electoral system is concerned, the laws in Hong Kong do provide that the Chief Executive cannot be a member of any political party. But after the Chief Executive is returned by election, he will be the most important political figure in the SAR. Like the head of government in other places, he must gain the support of various political parties and groupings in this Council and Members of the Legislative Council to ensure effective administration. Otherwise, it will be difficult to put into practice the motions and budgets proposed by us.

Despite the requirement that the Chief Executive must not maintain any political party membership, it is, in fact, necessary to solicit support from various parties and groupings and also from Members for our daily implementation of policies and for political reasons. This is an unchangeable principle.

In view of this, when the Accountability System for Principal Officials was implemented in 2002, a provision was made to the effect that when nominations are made on the appointment of Principal Officials, persons with political affiliation are allowed to join the team of Principal Officials of the SAR Government, and Members of the Legislative Council with different political party background were then appointed to become Members of the Executive Council and take part in the decision-making process. This is an initial stage of development. I believe in future, continuous efforts will be made to promote development in this direction, so that more people with different background can take part in the work of the SAR Government, which will be helpful to us in forging consensus in society and in this Council.

MR RONNY TONG (in Cantonese): *President, the Secretary did not answer my supplementary question at all. My question was about credibility, but he talked about officials in his reply. My question is: If the Chief Executive has political affiliation, will it enhance his credibility? I would like the Secretary to respond to this direct.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the most direct answer is that I believe candidates for the office of the Chief Executive must make an effort to secure public support disregarding

whether he has political affiliation. They must do so in the course of the election and also after the election. Only this is the most useful type of credibility.

MS AUDREY EU (in Cantonese): *President, in the last paragraph of part (a) of the Secretary's main reply, he said that the package of proposals put forward by the Government was voted down by the Legislative Council and this had caused Hong Kong to miss an opportunity to achieve more democracy in 2007 and 2008*

President, I would like to ask the Secretary this: Before the reunification, Hong Kong had actually abolished all District Council (DC) seats in a gradual and orderly manner, but in its package the Government proposed the inclusion of the 102 appointed DC members in the Election Committee and five new functional constituencies were also proposed by the Government. According to the results of a survey published by Dr Robert CHUNG of the University of Hong Kong just yesterday, it was found that close to 68% of Hong Kong people considered it necessary to abolish appointed DC seats and that all DC members should be returned by universal suffrage as soon as possible. In view of these two points, will the Secretary tell us if he agrees that the package put forward by the Government, which proposed the inclusion of 102 appointed DC members in the Election Committee and the inclusion of five new functional constituencies is, in fact, a retrogression in democratization?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, with regard to the poll results published by the University of Hong Kong yesterday mentioned by Ms Audrey EU earlier, I would like to give a response in this connection.

We are always aware that Hong Kong people do have expectations and aspirations for universal suffrage, and we have continuously reflected this to the Central Government. However, in order to implement universal suffrage, we still need other support measures. First, a consensus must be reached in the Legislative Council. For example, we must reach a decision on how these 30 functional constituencies should be handled in the long run. Second, apart from forging a consensus in the community of Hong Kong, we also have to forge a consensus with the Central Authorities. Therefore, last year, we.....

MS AUDREY EU (in Cantonese): *President, earlier on you already urged all Members to be as concise as possible when asking their questions. President, could you also urge the Secretary not to "beat around the bush" and answer my supplementary question direct?*

My question is very simple. I was only asking whether this proposal of including 102 appointed DC members in the Government is a retrogression in democratization. In view of the two points that I have just raised, that is, appointed DC seats were all abolished in a gradual and orderly manner before the reunification and public opinions are unequivocally clear, will he please answer this question direct and stop "leading us on a garden tour"?

PRESIDENT (in Cantonese): This is not a point of order. You only expressed a wish. I also hope that the Secretary can be as concise as possible in answering questions, so that more Members can ask their supplementary questions.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I was coming to the crux of the question.

That was actually the background. Therefore, the proposal made by us last year to incorporate DC members into the two electoral systems was meant to enhance democratic representation in the electoral systems of the Chief Executive and Legislative Council elections.

As for the arrangement relating to the 102 appointed DC members, we had also proposed their abolition in phases at that time. So, in general, the SAR Government very much hopes to build up a democratic electoral system. Despite inadequate support from Members at that time, we will continue to work hard in future, hoping to forge a consensus to actively promote the implementation of universal suffrage.

MS AUDREY EU (in Cantonese): *I asked him whether the inclusion of these 102 DC members is a retrogression in democratization or a progress in democratization, but the Secretary actually did not answer this part of my question.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the package of proposals for the elections in 2007 and 2008 put forward by us last year would be a progress in democratization, for it would enable more elected members to take part in the Chief Executive and Legislative Council elections. On the other hand, we had proposed a direction and a package of proposals, and we had worked out a timetable on how the 102 appointed DC seats would be abolished in phases.

MR LEUNG KWOK-HUNG (in Cantonese): *President, I would like to ask the Secretary if he knows these people: YUAN Mu, LI Peng, Joseph GOEBBELS and WEI Xiaobao. Does he know these four people?*

PRESIDENT (in Cantonese): Is this your supplementary question?

MR LEUNG KWOK-HUNG (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): I see. Please sit down. Your supplementary question is not related to the subject of the main question.

MR LEUNG KWOK-HUNG (in Cantonese): *Yes, they are related, President.*

PRESIDENT (in Cantonese): If you wish to ask a supplementary question, please directly ask a supplementary question which is related to the subject.

MR LEUNG KWOK-HUNG (in Cantonese): *Since he can waste our time here, I certainly have a reason to ask him this.*

PRESIDENT (in Cantonese): Fine. Then, you must tell me what your question is. Mr LEUNG Kwok-hung, although this is a waste of time, I must still tell

you that your supplementary question must be related to the main question. But with regard to the four people whom you mentioned earlier, I do not see how they bear any relevance.

MR LEUNG KWOK-HUNG (in Cantonese): *No, I.....*

PRESIDENT (in Cantonese): I give you one more chance. Please state your supplementary question direct and it must be related to the main question. But please do not waste our time anymore.

MR LEUNG KWOK-HUNG (in Cantonese): *President, everybody will actually consider some people as examples or models, or there are people whom we admire, and these four people had always distorted democracy and spoken for dictators. I would like to know if the Secretary considers these four people as models, because there is not much difference between what he had just said and the rubbish said by these four people. If he can give me an answer, I would know what his position is and then I would ask him other questions.*

PRESIDENT (in Cantonese): Please sit down. You still cannot meet my requirement and that is, your supplementary question must be related to the subject of the main question asked by Ms Emily LAU.

MR LEUNG KWOK-HUNG (in Cantonese): *President, I.....*

PRESIDENT (in Cantonese): Please sit down. I will not give you any more time to ask your question, because you have already wasted two minutes of our valuable time.

MR LEUNG KWOK-HUNG (in Cantonese): *President, I will ask a new supplementary question right away. All these four people had labelled the democrats who were in the majority as the minority. This is the first point.*

Second, these four people all held the post of Minister for Propaganda in a society without democracy, like the society of Hong Kong. So, these four people are related.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, I think you are only expressing your personal opinions here which are not related to the main question. Please sit down, so that I can give another Member an opportunity to ask his question.

MR TAM YIU-CHUNG (in Cantonese): *President, certainly, I will strictly observe the Rules of Procedure.*

According to the Basic Law, with regard to the methods for selecting the Chief Executive and forming the legislature, changes can be made only with the endorsement of a two-thirds majority in the Legislative Council. But since Members of the "opposition camp" had opposed this motion, the package of constitutional reforms could not be passed. Such being the case, what can the Government do if it wishes to develop our constitutional system in future? Should they continue to put up opposition, how will the Government lobby Members of the "opposition camp" into accepting these proposals which would represent progress or development? What measures will he take in this regard?

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, your supplementary question is hypothetical in nature, as you assumed that the proposals to be put forward by the Government in future certainly would not have the support of some Members. *(Laughter)*

MR TAM YIU-CHUNG (in Cantonese): *No, I was not. Since the Government has kept saying that the last package of constitutional reforms was negated, and Ms Emily LAU also asked the Secretary in the main question whether he would lobby those people who are resistant for a change of attitude, I, therefore, asked the Government whether it is necessary also to lobby those people opposing the package. When the constitutional reform package represents progress, how will the authorities lobby these people in opposition for their acceptance?*

PRESIDENT (in Cantonese): Please sit down. To save time, I do not wish to get entangled any further. Secretary, please try your best to give a reply in your own way.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, although this supplementary question of Mr TAM Yiu-chung is quite a knotty one, I will try to answer it.

Firstly, the "opposition camp" or other parties or groupings should all bear in mind the voting result in December last year and draw a lesson from it. In fact, the positions declared by various parties and groupings were all supportive of the ultimate aim of universal suffrage. I particularly mentioned last year's experience not because I wish to rake up an old matter. Rather, I hope that Members from various parties and groupings, including the "opposition camp", will understand that we must make an effort to reach a consensus and we must be understanding and accommodating of each other to some extent, in order for progress to be made in the electoral systems in Hong Kong.

Secondly, Madam President, up to this moment, our discussion in the Commission on Strategic Development has, in fact, made certain progress. In general, members of the Commission all support the ultimate objective of universal suffrage. In our discussion over the past period of time, we have initially identified some directions. For example, many members admitted in the discussion that in order to address the issue of universal suffrage for the Legislative Council election, it is necessary to first come up with a proposal to address the future of these 30 functional constituencies. Second, if it is necessary to discuss the method of universal suffrage, we can start with the method of universal suffrage for the Chief Executive election, because there are clearer provisions on this in Article 45 of the Basic Law.

Therefore, with regard to Mr TAM Yiu-chung's question, I believe there is still hope as long as we have the sincerity to do something for Hong Kong seriously.

PRESIDENT (in Cantonese): Last question. Mr Ronny TONG.

Eligibility for CSSA

6. **MR RONNY TONG** (in Cantonese): *President, in January 2004, the Government tightened the eligibility for Comprehensive Social Security Assistance (CSSA) by increasing the period of residence in Hong Kong required of adult CSSA applicants from one year to seven years. However, the Social Welfare Department (SWD) may, at its discretion, waive such requirement. I have been told that some people who are badly in need of financial assistance but have stayed in Hong Kong for less than seven years have not received any reply from the SWD two years after submitting their applications for CSSA. In this connection, will the Government inform this Council:*

- (a) of the respective numbers of such CSSA applications received, approved with discretion and rejected by the SWD in each of the past two financial years; the number of applications withdrawn by applicants, and the reasons for withdrawal;*
- (b) whether it will review the above residence requirement as it has been implemented for more than two years; and*
- (c) of the average and the longest time taken for processing such CSSA applications; and whether consideration given to exercising discretion has resulted in a longer time for processing such applications?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the implementation of the seven-year residence requirement under the CSSA Scheme is in line with the recommendation by the Task Force on Population Policy that one has to meet the seven-year residence rule in order to enjoy non-contributory social benefits which are heavily subsidized by public funds. The rationale for the requirement is to ensure a rational basis on which the heavily subsidized social services are allocated.

The CSSA Scheme is non-contributory. It is entirely financed from general revenue. We need to strike a balance among the interests of various sectors of the community, having regard to the long-term sustainability of social

security services. We also need to ensure that public resources are allocated on a rational basis in the light of ever-rising demands. A seven-year residence is also normally required for the grant of permanent resident status in Hong Kong.

Many new arrivals do have the capability to work. It is good policy for the Government to encourage them to be self-reliant before resorting to public funds for their subsistence. It is also good policy to encourage migrants, wherever they come from, to plan for their subsistence before they come to Hong Kong. Indeed, most developed countries require a prior period of residence as a condition for the receipt of non-contributory welfare benefits.

Before imposing the residence requirement under the CSSA Scheme on 1 January 2004, the Government had consulted the public, the Legislative Council, various advisory committees, chairmen and deputy chairmen of district boards. My replies to the various sections of the question are as follows:

- (a) For residents in genuine hardship, the Director of Social Welfare can exercise discretion to waive the residence requirement for social security benefits. In 2004-05 and 2005-06, the SWD received 1 665 and 3 856 applications respectively involving people who did not meet the seven-year residence requirement. The figures are as follows:

	2004-05	2005-06
No. of CSSA applications involving people who did not meet the seven-year residence requirement	1 665	3 856
No. of applications approved with discretion	230	843
No. of applications rejected	18	26
No. of applications withdrawn	1 299	2 892

In processing CSSA applications, the staff of the SWD would explain to the applicants the application procedures and residence requirement. Most applicants choose to withdraw their applications on learning of the application criteria and requirements

(including the limits on assets and income, residence requirement and the additional criteria for adults available for full-time work, and so on). The SWD does not know the reasons for withdrawal, as applicants are not required to provide them.

- (b) We have no plan to change the residence requirement. In fact, while implementing the seven-year residence requirement, we have at the same time relaxed the rule so that Hong Kong residents aged below 18 can receive CSSA without any prior residence requirement. The SWD would periodically review the operation of its various services provided to social welfare recipients, including the vetting procedures for CSSA applications, and make improvements where necessary.
- (c) Generally speaking, the vetting procedures would be completed within four weeks, subject to the provision of all relevant information. Investigation on special cases may take more time. The SWD has not collated statistics on the time required for processing CSSA applications from applicants who do not meet the seven-year residence requirement.

MR RONNY TONG (in Cantonese): *I am very disappointed with the reply given by the Secretary in response to part (b) of the main question. I asked the Secretary whether he has considered that, as Article 24 of the Basic Law stipulates that residents of the SAR shall include both permanent residents and non-permanent residents and they are equal before the law. And Article 36 explicitly says that Hong Kong residents shall have the right to social welfare. And Articles 2 and 26 of the International Covenant on Human Rights also stipulate that all the people shall not be subject to any discrimination for whatever reasons. Under such circumstances, why can the Government not review or even abolish such an unequal, unreasonable and unconstitutional requirement?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, Article 36 of the Basic Law confers the right on Hong Kong

residents to social welfare, but Article 145 also stipulates, "On the basis of the previous social welfare system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of this system in the light of the economic conditions and social needs." The implementation of the seven-year residence requirement is to ensure the long-term sustainability of the social security system in Hong Kong, and it is also a reasonable allocation of public resources against ever-rising demands. Therefore, it is in total compliance with the provisions of the Basic Law.

MR RONNY TONG (in Cantonese): *President, the articles concerned do not authorize the Government to discriminate against new immigrants. And from the statistics, we can see that there are not really a lot of applications. As such, why does the Government not respect the basic human rights requirement in this regard?*

PRESIDENT (in Cantonese): This is a supplementary question, not a follow-up.

MR RONNY TONG (in Cantonese): *President, I asked the question to follow up his reply.*

PRESIDENT (in Cantonese): Please sit down. It is explicitly stipulated in the Rules of Procedure that the follow-up question put forward by a Member must be part of the original supplementary question. Only in this way can I allow Members to raise questions. However, as this is not part of your original supplementary question, you will have to wait for another turn. I shall let you raise it if the opportunity arises.

MR FREDERICK FUNG (in Cantonese): *President, in my work as a Member, I have come across some cases in which soon after a woman's arrival in Hong Kong with her children, her husband passed away. So she had to apply for*

CSSA. But usually the Government would only approve and grant CSSA for the children, whereas the woman's CSSA was not granted. So as a result, the CSSA for two persons has to be spent on meeting the living expenses for three. From my own point of view, obviously they do not have any assets or other forms of assistance. But the SWD still refuses to grant CSSA to the wife. There are many such cases. May I ask the Secretary, under such circumstances, whether the exercise of discretion to approve CSSA applications is still outside the portfolio of the Secretary? Can a policy be formulated to waive the requirement for similar cases under such circumstances?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, when the Director of Social Welfare exercises his discretion in individual cases, he will take the various factors in such cases into consideration. Instead of simply specifying that a certain type of persons would definitely be eligible for receiving CSSA, such as those who have lost their spouses, he shall have to consider other issues such as the livelihood of the applicants, the difficulties they are facing, whether they have access to other resources and available assistance in Hong Kong and whether the applicants can get assistances from other sources, and so on. We cannot discuss the needs of individual cases here, but under such circumstances, we can see that we had 843 successful applications last year. It is attributable to this reason.

MR ALBERT HO (in Cantonese): *I was really shocked at hearing the Secretary's interpretation of Article 145 of the Basic Law just now. I find that the Government bases its consideration on economic conditions and social needs, and thinks that human rights can be ignored. It even thinks that, for the consideration of economic development and social needs, certain human rights principles are unimportant. I would like to ask the Secretary: Before he prepared the reply to this question, had he consulted legal experts in the Department of Justice? Does the Secretary know that the International Covenant on Human Rights and our Bill of Rights Ordinance in fact enjoy an overriding status? Among the provisions, the human rights provisions in Chapter 3 have to be observed absolutely. We can strive together to promote economic development and take social needs into consideration only when such principles for protecting human rights are observed. Does the Secretary not agree with such an understanding?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): It is stipulated in section 9 of the International Covenant on Economic, Social and Cultural Rights that the States Parties to the Covenant recognize the right of everyone to social security, including social insurance. The United Nations Committee on Economic, Social and Cultural Rights points out that the basic obligation of the States Parties is to ensure that each and every right contained in the Covenant must be met at least at the minimum required standard. This I have to emphasize. Therefore, all our policies must attain such a standard. In implementing the seven-year residence requirement, together with some other protection, the SAR Government has been able to satisfy the requirement in this regard.

MR ALBERT HO (in Cantonese): *The question I raised is very specific, that is, when Article 145 of the Basic Law is implemented, is it necessary for the Government to ensure that the human rights principles and the International Covenant mentioned in Chapter 3 are respected? The Secretary has not answered the point on whether he agrees that economic development can be promoted only when human rights principles are respected.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, such issues had all been taken into consideration when we implemented social welfare policies and the right of abode policies, and such policies had all been discussed repeatedly in the Legislative Council before they were endorsed.

MR LEE CHEUK-YAN (in Cantonese): *There is consensus in society that we do not wish to see the emergence of inter-generational poverty. I believe the Secretary also agrees to this point. However, among the cases we have come into contact, many involve single-parent mothers living on CSSA of their children. It is most unlikely for such children to have any good development. Regarding such hardship cases, I do not know what kinds of solution the Secretary can come up with after he has reviewed the relevant figures. Among 3 856 applications, 2 892 have been withdrawn by the applicants and the reasons for their withdrawals are unknown. In fact, the reasons are very simple, though I do not know whether the Secretary will agree with me. Why did they withdraw their*

applications? It was because the applicants did not know that there is the possibility that discretion can be exercised. As the Government has imposed the residence requirement and since the applicants know that they cannot satisfy the eligible criteria, so they have no alternative but to withdraw their applications. May I ask the Secretary, if he wants to help these families, whether he will direct SWD staff members under him to explain to the applicants that discretion could be exercised in their cases, even though they know that these applicants do not satisfy the residence requirement? In fact, President, just take a look, once discretion is exercised, the success rate becomes very high. The problem is: The Government simply does not exercise any discretion at all.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese):

Madam President, I have to correct one fact, that is, the number of applications approved with discretion is not very large. Among 3 856 applications, only 843 were approved last year. And among 1 665 applications submitted in the year before, only 230 were approved. Our colleagues at the SWD would explain to each applicant his rights, and would also request them to furnish certain necessary figures in the process of vetting the applications, and such figures should include information on other aspects such as their assets or their work, and so on. We have some booklets on this for distribution to all the applicants, and in such booklets, there is information specifying the time they can apply for waivers. Therefore, I think the provision of information in this regard is already quite adequate. Our colleagues would not leave applicants in the dark on the rights to which they are entitled and deprive them of the information in this connection.

MR WONG KWOK-HING (in Cantonese): *According to the table in part (a) of the main reply, there were 843 applications approved with discretion and 26 rejected, adding up a total of 869 applications. So, 97% applications were approved with discretion, and 3% rejected. Similarly, in 2004-05, there were altogether 248 applications in these two columns; of which, 93% were approved and 7% rejected. From these figures, we can see that applications approved in fact amounted to over 90%, that is, many people did have such needs. Based on the above factors, I would like to ask the Secretary through the President: Will the Government really consider relaxing the eligibility criteria? This is because, as it appears, people do have difficulties.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, at present, among applications approved with discretion, as I have said just now, if I really need to denote those approved with discretion, there are really quite a lot of them. However, if we are talking about all the people with less than seven years' residence in Hong Kong, then the approval rate is not high at all. The main problem is, we must explain to all the people arriving at Hong Kong that, it is not necessary for them to rely entirely on social security for the provision of their livelihood. Very often, they can find a job, and they can also secure support from other networks in society. Therefore, we think that the present system is already adequate for ensuring that those who genuinely need to have their applications approved with discretion can be provided with assistance.

MR WONG KWOK-HING (in Cantonese): *President, the Secretary has not answered whether he will reconsider the situation.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, at present, we often consider the needs of all the individual cases or whether they have any special needs. Our approach of deliberation is to examine their specific needs. If the children of an applicant are very young, we shall see how we can help them. For example, if the beneficiary is chronically ill, we shall see how we can help him. In this regard, we shall provide assistance to the applicants according to the specific needs of individual cases. Therefore, in terms of policy, we believe our present mechanism can cover all such needs within our various safety nets already. Therefore, we have not considered conducting a comprehensive review for the time being.

DR FERNANDO CHEUNG (in Cantonese): *President, our CSSA system is the only safety net in society. The spirit of the system is to help those who can least help themselves to maintain their right to a basic living. Now, the policy of implementing the seven-year residence requirement has actually made some people ineligible for CSSA. Many Honourable Members have also mentioned, and I have also come across many cases in which two persons in a single-parent family are living on CSSA for one person, CSSA for the small child; or even three*

persons living on CSSA for two. I would like to ask the Secretary: Is it humane for two persons to live on \$1,610 a month in Hong Kong nowadays? Is it acceptable to the Secretary?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, on the other hand, I have just mentioned that the Director will decide whether he will approve the application, depending on the family condition and the specific needs of the applicants. As for the question of how much money is considered adequate for supporting a person's livelihood in a month, all the families are different. The Director will also exercise his discretion to help those two-person families which are receiving CSSA for only one person. Of course, he still has to consider other aspects such as whether they have some other savings, assistance, work and the ages of the children, and so on. Therefore, with regard to the present situation, we think the existing mechanism is already adequate for handling those who are genuinely in need.

DR FERNANDO CHEUNG (in Cantonese): *The Secretary has not answered my question. I asked him: Is it humane for two persons to live on \$1,610 a month? My question is very explicit.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have already answered the question just now.

PRESIDENT (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

MR LAU KONG-WAH (in Cantonese): *According to the table in the main reply provided by the Secretary, 230 applications were approved with discretion in 2004-05 and the figure has increased to 843 in 2005-06, which represents a substantial increase. I would like to ask this question: Does this increase reflect a change in the standards adopted in exercising discretion or an actual increase of people coming to Hong Kong with no working abilities?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we cannot draw too many conclusions out of such data. This is because there were less people coming to Hong Kong from the Mainland in 2004, but this figure rose in 2005. We have a daily quota of 150 persons coming from the Mainland to Hong Kong. In 2004, the daily average figure was 104. However, in 2005, this daily quota was fully utilized, that is, 150. Therefore, the figure has increased. However, we do not quite understand what happened. We also want to find out whether it was because the mainland authorities had granted more approvals, thus resulting in more new arrivals to Hong Kong. This is a situation we should be concerned about. The increase in the number of mainlander coming to Hong Kong could be the reason leading to the increase in the number of people applying for CSSA. Does this phenomenon reflect that more people with no or little financial support have arrived in Hong Kong? Regarding the applicants now, we can see that the figures appear to be on the rise. But I believe the figures collected in one year are inadequate for making any reliable analysis.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Impact of Tax Increase Prevention and Reconciliation Act

7. **DR DAVID LI:** *President, some companies employing United States citizens to work in Hong Kong, as well as individual United States citizens residing in Hong Kong, are concerned that by significantly lowering the ceiling of housing cost which may be deducted from taxation, the Tax Increase Prevention and Reconciliation Act (the Act) signed by the United States President on the 17th of last month has greatly increased the tax burden of United States citizens in Hong Kong. In this connection, will the Government inform this Council whether:*

- (a) *it has studied the impact of the Act on Hong Kong's attractiveness as a regional base for United States companies and as a workplace for United States citizens; if so, of the results of the study; if not, the reasons for that;*

- (b) *it has referred to the United States Government the concerns of these companies and individuals; and*
- (c) *it intends to make representation to the United States Government for Hong Kong to be considered as one of the overseas jurisdictions with high housing costs, hence enabling the United States citizens concerned to become eligible for more allowable tax deduction under the provisions of the Act?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:
President,

- (a) We have not conducted any formal study on the possible effects of the Act on the attractiveness of Hong Kong as a regional base for American companies and a place for American citizens to work. We understand that the Act, which seeks to change the formula for foreign housing cost deductions, will apply generally to Americans living outside the United States, and not specifically to those living in Hong Kong. Our preliminary observation is that the attractiveness of Hong Kong as a regional base for American companies to establish and invest, and a place for American citizens to work in, would not be eroded as a result of the Act. Hong Kong's competitiveness is underpinned by the rule of law, an efficient administration, a free flow of information, a sophisticated infrastructure, and a level playing field, all of which are cornerstones of our success in becoming one of the best cities in the world for trade and investment. Hong Kong's attractiveness would not be altered just because of the enactment of the Act.
- (b) We understand that members of the American business community in Hong Kong have already joined a delegation of the Asia Pacific Council of American Chambers of Commerce to Washington, DC. The delegation will meet with members of the United States Congress and the United States Government to discuss the implications of the Act for Americans living abroad. In this connection, we do not consider that at this stage, it is necessary for the Hong Kong Government to approach the United States Government to discuss the implications of the Act on Americans working in Hong Kong.

- (c) While we have not provided any views on the Act to the United States Government, we will closely monitor developments in connection with the Act in the United States.

Statistics on CSSA Families

8. **MR LAU CHIN-SHEK** (in Chinese): *President, will the Government:*

- (a) *provide a breakdown, by the number of family members, of the following in each of the past three years*
- (i) *the average monthly payments under the Comprehensive Social Security Assistance (CSSA) Scheme to recipient families; and*
- (ii) *the number of families whose monthly income is less than the average amount received by the CSSA families with the same number of family members; and*
- (b) *provide a breakdown, according to the table below, of the total number of persons from the low-income families in item (a)(ii) above?*

Age	Sex	2003	2004	2005
below 15	female			
	male			
	sub-total			
15 to 29	female			
	male			
	sub-total			
30 to 49	female			
	male			
	sub-total			
50 to 64	female			
	male			
	sub-total			
over 65	female			
	male			
	sub-total			
Aggregate	female			
	male			
	total			

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese):
President,

- (a) The amount of CSSA payment to a family is determined by the circumstances and needs of the family (for example, the age, health condition and income of its members). Therefore, the amount of CSSA payment differs from family to family. The average monthly CSSA payments represent the overall average figures for reference purposes.
- (i) Based on the statistics of the Social Welfare Department (SWD), the average monthly CSSA payments (a breakdown by the number of family members) to recipient families under the CSSA Scheme are tabulated below:

<i>No. of eligible members</i>	<i>Average monthly CSSA payments^(Note)</i>		
	<i>2003-04</i>	<i>2004-05</i>	<i>2005-06</i>
1	\$3,623	\$3,503	\$3,477
2	\$5,982	\$5,817	\$5,798
3	\$7,831	\$7,727	\$7,779
4	\$9,178	\$9,068	\$9,172
5	\$10,827	\$10,756	\$10,896
6 or above	\$13,483	\$13,430	\$13,646

Note: Refer to the situation when CSSA cases do not have income other than CSSA payment

- (ii) According to the findings of the General Household Survey (GHS) conducted by the Census and Statistics Department (C&SD), in the past three years, the number of domestic households with monthly household income less than the average CSSA payment received by a CSSA family of the same size is tabulated as follows:

<i>Household size</i>	<i>Year</i>		
	<i>2003</i>	<i>2004</i>	<i>2005</i>
1	100 300	90 200	97 800
2	115 300	120 300	113 100
3	77 800	73 200	72 800
4	81 300	75 000	68 600

<i>Household size</i>	<i>Year</i>		
	<i>2003</i>	<i>2004</i>	<i>2005</i>
5	38 600	35 600	30 800
6	20 800	18 700	15 600
Total	434 100	413 000	398 800

Notes: (1) The above figures and the figures in (b) below are compiled by comparing the household income as reported by individual households with the average CSSA payment received by a CSSA family of the same size. Some of the households concerned may have a certain amount of assets. However, no further analysis can be made as data concerning the assets owned by these households are not collected in the GHS.

(2) Foreign domestic helpers are excluded from the compilation of the above figures.

(3) Owing to the differences in compilation methodology and statistical concepts, the figures above and the figures on CSSA cases compiled by the SWD are not directly comparable. Moreover, since the figures are categorized by income, some of the CSSA families are included in the figures above.

(4) Figures may not add up to the respective totals owing to rounding.

(b) Based on the statistics from the C&SD, the number of persons living in domestic households as mentioned in (a)(ii) above is tabulated below:

<i>Age</i>	<i>Sex</i>	<i>Year</i>		
		<i>2003</i>	<i>2004</i>	<i>2005</i>
below 15	female	122 100	111 000	101 400
	male	128 000	118 200	103 100
	sub-total	250 100	229 100	204 500
15 to 29	female	85 000	81 500	76 900
	male	85 500	82 500	74 100
	sub-total	170 500	164 000	151 100

Age	Sex	Year		
		2003	2004	2005
30 to 49	female	183 100	172 300	152 800
	male	142 400	123 300	106 900
	sub-total	325 500	295 700	259 600
50 to 64	female	84 100	82 900	83 800
	male	87 100	84 300	79 800
	sub-total	171 300	167 300	163 600
65 or above	female	133 900	127 600	125 600
	male	130 200	122 700	124 100
	sub-total	264 200	250 300	249 800
Aggregate	female	608 300	575 400	540 600
	male	573 200	531 000	488 000
	total	1 181 500	1 106 300	1 028 600

Note: (1) The Notes (1), (2), (3) and (4) of (a)(ii) are also applicable to this table.

Among the above persons in 2005, about 77% of them are economically inactive, such as students, retirees, housewives and chronically ill patients.

Elderly Home Care Services

9. **MISS CHAN YUEN-HAN** (in Chinese): *President, regarding home care services for the elderly, will the Government inform this Council:*

- (a) *of the current number of non-urgent cases of elderly persons waiting for services such as household cleaning, meal delivery, escort for medical consultations, bathing for frail elderly persons, nursing care and physiotherapy, and the respective average and longest waiting times for the same type of cases in various districts;*
- (b) *as an additional \$20 million will be earmarked annually from this financial year onward to strengthen home care services for the elderly, of the services on which the provision will be used, and the estimated reduction in the waiting time of the service users and workload of front-line care workers as a result of the additional resources; and*

- (c) *whether it will review, in the near future, the mode of and demand for the integrated home care services (IHCS) specifically provided for the elderly, so that such services can immediately be available to all the elderly in need?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): President, caring for elders is not just the responsibility of the Government alone. Elders and families should also share the responsibilities. Through the social safety net and various types of subsidized services, the Government strives to enhance the quality of life of elders, and facilitate families and carers to take care of elders. Public resources are limited. We have to deploy resources effectively and render subsidized services to elders most in need.

Elders will enjoy better physical and mental health if they live in the community and maintain a normal social life. Therefore, in further developing elderly services, the Government's emphasis is to assist elders to age in their domestic homes. In this regard, we provide elders in need, including elders who do not have long-term care (LTC) needs, with various types of community care and support services.

Elders who have LTC needs may apply for subsidized home care services which include assistance in daily living, personal care, physiotherapy, meal delivery, household cleaning and escort services. The services are provided by the 60 IHCS Teams and the 18 Enhanced Home and Community Care Services (EHCCS) Teams. Elders using the services have to go through the Standardized Care Needs Assessment to ascertain whether their frailty has reached moderate or severe level. At present, there are more than 3 000 elders using these services. Elders who have LTC needs may also apply for day care services provided by the Day Care Centres/Units for the Elderly. There are at present 1 955 day care places.

Elders who do not have LTC needs may apply for subsidized home care services which include meal delivery, household cleaning and escort. The services are provided by the IHCS Teams. Elders using the services do not have to go through the Standardized Care Needs Assessment. At present, about 16 000 elders are using these services (known as IHCS (Ordinary Cases)).

All of the services mentioned above are non-means-tested.

My replies to the specific questions raised by the Honourable CHAN Yuen-han are as follows:

- (a) There are vacancies in the home care services for elders who have LTC needs. Users do not have to wait for these services.

There are about 2 000 cases waiting for home care services for elders who do not have LTC needs (that is, IHCS (Ordinary Cases)). All are non-urgent cases. For urgent cases, IHCS Teams will provide the elders with services that are in urgent need (for example, meal delivery) immediately. Over 75% of the 2 000 waitlisted cases are seeking household cleaning service. The waiting time varies from districts to districts, ranging from a few days to a few months. At present, 21 of the 60 IHCS Teams do not have waitlisted cases.

- (b) The Financial Secretary has allocated an additional \$20 million recurrent funding in 2006-07 for the Social Welfare Department (SWD) to strengthen home care services for elders. The SWD will deploy the additional resources to increase the capacity of IHCS (Ordinary Cases). The SWD will take into account the existing service volume and waitlisted caseload of individual IHCS Teams to determine the appropriate amount of additional resources for each of them to strengthen their manpower to share the workload and increase the service capacity. We project that, with the additional capacity to be generated by the \$20 million additional resources, we should be able to provide services to the majority of those currently waiting for the services.
- (c) In 2006-07, the Government's expenditure on subsidized elderly services is estimated to be about \$3.3 billion. The estimated expenditure on home care services is about \$529 million. With an ageing population, there will be a growing demand for subsidized elderly services (including home care services). To enhance the quality of life of elders, we will strengthen the services as appropriate, taking into account the availability of resources. As public resources are limited, we have to ensure that resources are deployed effectively to render services to elders most in need.

At present, subsidized home care services and other subsidized elderly services are heavily subsidized. Also, they do not require means-testing. The meal delivery, household cleaning and escort services for elders in general do not require users to go through the Standardized Care Need Assessment. We need to consider whether the existing targeted users, level of subsidy and charges, and service delivery mode of the subsidized elderly services are conducive to the efficient use of public resources, fostering family support, and the sustainability of the system. We have started exploring these issues with the Elderly Commission.

Sea Water for Flushing

10. **MR MA LIK** (in Chinese): *President, regarding the supply of sea water for flushing, will the Government inform this Council of:*

- (a) *the number of water accounts for which sea water for flushing is currently not provided, with a breakdown by district, as well as by residential and commercial users; and*
- (b) *the projects for the supply of sea water for flushing which are in progress and under planning respectively; as well as the expected completion dates, latest progress and estimated costs of these projects, and the areas which will benefit from these projects?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Chinese): President,

- (a) There are currently some 23 000 water accounts¹ of fresh water flushing in the territory, which represents around 20% of the population using fresh water for flushing. The breakdown of the number of the above water accounts by district is shown in Table 1.

¹ Water accounts include those for individual meters and communal meters.

We do not have a breakdown by residential and commercial users.

- (b) Information on public works projects under construction, involving the supply of sea water for flushing are set out in Table 2. Details shown include project titles, estimated costs, expected completion dates and the areas which will benefit from the projects.

There are also a number of waterworks projects at planning or detailed design stage in various districts. The total estimated costs of those projects involving the supply of sea water for flushing are around \$1.1 billion. The programmes of these projects will however be revised regularly based on the development in design, land availability and other administrative and planning considerations. Therefore, the details will only be listed out in the annual Estimates when the projects are scheduled for commencement.

Table 1

<i>District</i>	<i>Number of Water Accounts of Fresh Water Flushing</i>
Northern District	1 200
Lantau Island, Outlying Islands	3 500
The Peak	400
Sai Kung	700
Southern District	1 600
Tai Po	2 200
Ting Kau, Sham Tseng, Tsing Lung Tau	500
Tin Shui Wai, Tuen Mun, Yuen Long	9 300
Central and Western District	2 100
Wan Chai	1 000
Yau Tsim Mong	300
Tsuen Wan	200
Total	23 000

Table 2

<i>Public Works Programme Item No.</i>	<i>Works Project Title</i>	<i>District</i>	<i>Total Estimated Cost of Works Projects (\$ million)[#]</i>	<i>Estimated Costs of Portions for the Supply of Sea Water for Flushing (\$ million)[#]</i>	<i>Commencement Date</i>	<i>Expected Completion Date</i>
9180WC*	Water supply to Pak Shek Kok reclamation area, Tai Po — stage 1	Pak Shek Kok, Tai Po	32	12	March 2002	December 2006
9181WC*	Water supply to Central reclamation phase III	Central	13	6	February 2003	October 2008
B127WC*	Mainlaying within development near Choi Wan Road and Jordan Valley	Ngau Tau Kok	79	48	November 2001	August 2008
B128WC*	Remaining waterworks for development near Choi Wan Road and Jordan Valley	Ngau Tau Kok	137	77	June 2005	January 2008

at money-of-the day prices.

* the project includes associated fresh water supply works.

Monitoring Pesticide Residue Levels of Imported Fruits

11. **MR FRED LI** (in Chinese): *President, regarding the monitoring of the levels of pesticide residues in fruits imported to Hong Kong, will the Government inform this Council:*

- (a) *whether there is a mechanism for monitoring imported fruits; if so, of the scope and process of monitoring; if not, the reasons for that;*
- (b) *of the methods for determining the levels of pesticide residues in imported fruits, the criteria used for comparing the highest levels of pesticide residues in different fruit samples, and the way to determine the maximum residue limits for fruits which are not prescribed by the Codex Alimentarius Commission of the United Nations;*
- (c) *of the details of the sample checks conducted by the authorities on the levels of pesticide residues in imported fruits in the past three years, including the respective numbers of samples taken in Hong Kong Island, Kowloon and New Territories for inspection, the respective percentages of each type of the fruits involved in the total number of samples inspected, the respective numbers of samples of each type of fruits which contain pesticide residues exceeding the permitted levels and their respective percentages in the total number of such samples; and*
- (d) *whether different monitoring methods or standards are applied to fruits imported from different places of origin, and whether, according to the risks posed by various types of fruits in different seasons, higher-risk fruits are particularly targeted for inspection during a particular season; if so, of the relevant methods or standards, the list of higher-risk fruits in different seasons and the number of relevant samples taken for inspection; if not, the reasons for that?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese):
President,

- (a) Apart from taking samples of imported fruits for tests at the border entry points, the Food and Environmental Hygiene Department (FEHD) also take fruit samples at the wholesale and retail levels for tests on pesticide residues at the Government Laboratory to ensure that the fruits on sale in the markets are safe and fit for human consumption.

- (b) In testing for pesticide residues in imported fruits, we make reference to the standards of Codex Alimentarius Commission and the results of scientific analyses and risk assessments. In conducting risk assessments, we would compare the intake level of the pesticides from the food concerned, as derived from the amount of residues present in a certain food product and the consumption data *per capita* of that particular food, with the safety standards set by the Joint Food and Agriculture Organization/World Health Organization experts to estimate whether the residual amount of pesticide would pose a health hazard.
- (c) Over the past three years, the FEHD has taken about 480 samples of different kinds of fruits at the entry points, wholesale and retail levels for tests on pesticide residues. Please refer to Annex for the kinds of fruits being tested. Amongst the samples tested, only one papaya sample was found to contain methamidophos at an amount of one part per million in 2003. We do not have any separate figures on the number of fruit samples taken from Hong Kong, Kowloon and New Territories.
- (d) Based on scientific analysis and the risk concerned, the FEHD takes appropriate number of samples from different kinds of food for tests under its regular food surveillance programme. As fruits are not considered to be at high risk, the number of samples taken is limited. However, the FEHD would adjust the types and number of fruit samples as appropriate. For instance, it would step up tests on seasonal fruits such as lychee and longan between June and September every year.

<i>2003 to 2005</i>		
<i>Number of Fruit Samples Taken</i>		
<i>Species</i>	<i>No. of Samples</i>	<i>Percentage of Total</i>
orange, tangerine, pomelo, grape fruit, lemon, lime, and so on	108	22.6%
apple, snow pear, pear, and so on	60	12.6%
wine grape, grape, strawberry, blackcurrant, blueberry, and so on	51	10.7%
water melon, honeydew melon, cantaloupe melon, and so on	33	6.9%

<i>2003 to 2005</i>		
<i>Number of Fruit Samples Taken</i>		
<i>Species</i>	<i>No. of Samples</i>	<i>Percentage of Total</i>
greengage, plum, peach, nectarine, prune, apricot, red bayberry, cherry, and so on	25	5.3%
others (including banana, mango, pineapple, persimmon, star fruit, lychee, longan, mangosteen, durian, papaya, kiwi fruit, loquat, guava, avocado, rambutan, and so on)	200	41.9%
Total	477	100.0%

Formulating Social Security Policy for New Arrival Women

12. **MISS TAM HEUNG-MAN** (in Chinese): *President, will the Government inform this Council:*

- (a) *of the number of applications from new arrival women with less than seven years' residence in Hong Kong to the Social Welfare Department (SWD) for financial assistance, in the past three years, and the number of such applications approved by the SWD by exercising its discretion;*
- (b) *whether it has reviewed the procedures and criteria for exercising discretion as well as the consistency in processing the above applications by SWD officers; if it has, of the details of the review results and follow-up actions; if not, when it will conduct such review; and*
- (c) *whether it will consider formulating a social security policy for new arrival women who are currently not eligible for Comprehensive Social Security Assistance (CSSA) but have genuine financial needs, instead of providing assistance to them by discretion; if it will, of the details and timetable of such a policy; if not, the reasons for that?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): President, the seven-year residence requirement under the CSSA Scheme was recommended by the Task Force on Population Policy, and has been

implemented since 1 January 2004. Under the requirement, one has to meet the seven-year residence rule in order to enjoy non-contributory social benefits which are heavily subsidized by public funds. The rationale for the requirement is to ensure a rational basis on which the heavily subsidized social services are allocated. Nevertheless the Director of Social Welfare (the Director) may exercise discretion to waive the residence requirement for provision of welfare in cases of genuine hardship. The replies to the sections are as follows:

- (a) Since the requirement became effective in 2004, the Director has exercised discretion to waive the seven-year residence requirement in a total of 373 cases of single parents. However, the SWD has not collated a breakdown of these cases by gender.
- (b) Since the SWD started to implement the seven-year residence requirement in 2004, it has issued guidelines to its front-line staff at Social Security Field Units on how to exercise the discretion to help people in genuine hardship. To ensure that the Senior Social Security Officers at the district level would exercise the discretion in a consistent manner, the SWD has prepared examples of typical cases for reference of approving officers.

In the light of the practical experience in implementing the seven-year residence requirement and the views of various parties, the SWD has refined the procedures and criteria for exercising the discretion. These include the applicants' means of livelihood, the causes of their present hardship, resources available and other possible sources of assistance in Hong Kong, as well as the possibility of returning to their places of origin. To enhance transparency in this respect, the SWD has incorporated the information in a pamphlet entitled "The Comprehensive Social Security Assistance Scheme and the Social Security Allowance Scheme - Residence requirements for applicants and permissible limits of absence from Hong Kong during receipt of payment" for distribution to public starting from October 2004. The pamphlet is also available on the website of the SWD.

In processing applications for CSSA from applicants who do not meet the seven-year residence requirement, the SWD considers each case on its own merits, with due regard to the special circumstances of each case.

The SWD would periodically review its various services provided to social welfare recipients, including the vetting procedures for CSSA applications, and make improvements where necessary.

- (c) The Administration is committed to providing care for the needy and the disadvantaged. There has been a significant growth in welfare expenses which, together with heavy subsidies for public health, housing and education, has built up a comprehensive safety net. The CSSA is the safety net of last resort to cover the basic needs of those in need. Where necessary, the staff of the Social Security Field Units of the SWD would refer CSSA applicants to other service units or government departments for appropriate services. For those in genuine hardship, the Director may exercise discretionary power to waive the residence requirement to provide a safety net of last resort. Therefore, we do not consider it necessary to draw up a separate welfare policy for new arrivals who are not eligible for the CSSA.

Moreover, the CSSA is not the only form of assistance for people in need. Subject to the individual need and assessment, other forms of assistance and support are available to new arrivals who are in need disregard of their length of residence in Hong Kong. These include employment assistance, emergency relief, cash assistance from charity trust funds, medical fee waivers, assistance in kind, referrals to singleton hostels for accommodation and to day relief centres for meals.

Banks Closing District Branches

13. **DR FERNANDO CHEUNG** (in Chinese): *President, some residents have reflected to me that many banks closed their district branches in recent years, causing great inconvenience to the residents, especially the elderly and the disabled, of the districts concerned. In this connection, will the Government inform this Council:*

- (a) *whether it knows the following information on the branches of the Hongkong and Shanghai Banking Corporation Limited, Hang Seng Bank, the Bank of China (Hong Kong) and the Standard Chartered Bank (Hong Kong) Limited, which were closed in the past five years:*

<i>Name of Bank</i>		
<i>District</i>	<i>Address of Branch</i>	<i>Date of Closure</i>
<i>Central and Western</i>		
<i>Wan Chai</i>		
<i>Eastern</i>		
<i>Southern</i>		
<i>Yau Tsim Mong</i>		
<i>Sham Shui Po</i>		
<i>Kowloon City</i>		
<i>Wong Tai Sin</i>		
<i>Tsuen Wan</i>		
<i>Kwun Tong</i>		
<i>Tai Po</i>		
<i>Yuen Long</i>		
<i>North</i>		
<i>Tuen Mun</i>		
<i>Kwai Tsing</i>		
<i>Sha Tin</i>		
<i>Sai Kung</i>		
<i>Islands</i>		

- (b) *whether it has requested the banks to assess, before closing their branches, the impact of such closure on the elderly and the disabled in the relevant districts; if it has, of the details; if not, the reasons for that; and*
- (c) *whether it has taken measures to ensure that, after closure of those district branches, basic banking services are still available to the elderly and people with disabilities in the relevant districts; if it has, of the details of the measures; if not, the reasons for that?*

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

- (a) The Hong Kong Monetary Authority (HKMA) considers it inappropriate to provide the requested information which relates to the operation of individual authorized institutions. Nevertheless, it appends below a table showing the aggregate number of branches

opened and closed by the four mentioned banks and other banks over the past five years. In addition, the HKMA will relay Dr the Honourable Fernando CHEUNG's request for information to the relevant banks and will request them to consider providing the information to the Legislative Council directly.

	<i>Number of local branches</i>			
	<i>As of 31 December 2001</i>	<i>Changes between 31 December 2001 and 31 May 2006</i>		<i>As of 31 May 2006</i>
		<i>Opened</i>	<i>Closed</i>	
The four banks mentioned in the question	693	38	193	538
Other banks	712	119	167	664
All banks	1 405	157	360	1 202

- (b) Whether to open or close a branch is a commercial decision for banks. The considerations they are likely to take into account include the needs of their customers, their business strategies, as well as the costs for maintaining the branch, which eventually will affect the cost of banking services provided to their customers. Under the Banking Ordinance, the HKMA is charged with the responsibility for promoting the general stability and effective working of the banking system. Other than for the purposes of prudential supervision, the HKMA does not have the authority, and indeed it considers it inappropriate, to set out specific parameters for banks to follow in making commercial decisions. Nonetheless, it generally encourages banks to take into account impact on their customers in closing branches and take steps to minimize any inconvenience caused to them. Such steps include, for example, installing ATMs as replacement and giving advance notice to customers before closing a branch.
- (c) While banks operate according to commercial principles, we have been encouraging the banks to take into account corporate social responsibility in conducting their business and have due regard to

the needs of the public. In this regard, we are aware that most retail banks in Hong Kong waive their charges for maintaining a bank account for social welfare recipients. Electronic banking services are economical and widely available. A major bank has also taken the initiative to provide more user-friendly ATM services for the elderly and others in need. For those elderly and disabled persons who are receiving welfare payments but have mobility problem and have no relatives or friends to collect payments for them from the banks, the Social Welfare Department will arrange special monthly cash delivery to these recipients.

The industry has been proactive in considering ways to minimize the impact of branch closures on the public. The Hong Kong Association of Banks has established a special task force to consider the issue and will discuss its findings with the Legislative Council Panel on Financial Affairs shortly.

Unlicensed Travel Agents Organizing Study Tours

14. **MR HOWARD YOUNG** (in Chinese): *President, it has been reported that some institutions made use of the grey areas in the Travel Agents Ordinance (the Ordinance) to organize study tours. At present, 20% of the study tours are not organized by registered travel agents, and participants of such tours will not be protected by the Travel Industry Compensation Fund. In this connection, will the Government inform this Council:*

- (a) *of the total number of complaints received in the past three years about study tours and the main contents of such complaints;*
- (b) *of the measures in place to eliminate unlicensed travel agents so as to protect the participants of study tours; and*
- (c) *whether it will consider making a mandatory requirement that study tours must be organized by licensed travel agents and led by Tour Escort Pass holders; if so, of the time it plans to implement the requirement; if not, the reasons for that?*

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

- (a) In the past three years (January 2003 to May 2006), the number of complaints relating to study tours received by the Travel Agents Registry is as follows:

<i>Year</i>	<i>Number of complaint cases</i>
2003	2
2004	23
2005	3
2006 (as at end of May)	1
Total	29

All the above complaints are suspected cases of operating unlicensed travel agent business.

- (b) and (c)

According to section 4 of the Ordinance, any person who carries out the following business in Hong Kong should apply to the Registrar of Travel Agents for a travel agent licence:

- (i) to obtain for another person carriage, by any means of conveyance, on a journey which is to commence in Hong Kong and which thereafter is to take place mainly outside Hong Kong; or
- (ii) to obtain for another person accommodation at a place outside Hong Kong (not exceeding 14 days).

When it comes to the notice of the Registrar that any organization is involved in operating unlicensed travel agent business, the Registrar will follow up immediately and, where necessary, refer the case to the police for further investigation. Any person who contravenes relevant provisions of the Ordinance is liable to a maximum penalty of a fine of \$100,000 and imprisonment for two years on conviction.

In determining whether an organization which organizes study tours is involved in conducting unlicensed travel agent business, the Registrar will, having regard to the above interpretation under the Ordinance, take into account a host of factors including whether such activity is the core business of the organization (for example, frequency of the activity and the motive of organizing such activity), whether the operation is conducted on a commercial basis (for example, whether the objective is to obtain pecuniary gain), and other relevant considerations.

The Ordinance sets out clearly what kind of business constitutes travel agent business, and requires the application for a travel agent licence before carrying out such business. It is not the intention of the legislation to capture an organization which does not operate travel services on a commercial basis and as its core business. Taking study tours as an example, quite a number of the study tours are organized by local universities or secondary schools in collaboration with overseas universities or schools, so as to make use of the facilities and teaching resources of these overseas institutions to arrange learning and exchange activities for local students during long school holidays. Therefore, we do not consider it appropriate to require all organizations organizing study tours to obtain a travel agent licence, or to restrict the organization of study tours to licensed travel agents only. Notwithstanding the above, for the sake of consumer protection, the Registrar, the Travel Industry Council of Hong Kong (TIC) and the Consumer Council have all along been encouraging parents to collect more information before enrolling their children for study tours. In case where the organizer of a study tour is not a licensed travel agent or has not engaged a licensed travel agent to make the arrangements, parents should consider whether the organization has the relevant experience and capability in organizing study tours. Moreover, parents should take out travel insurance for their children according to their needs.

As to travel agents, in order to enhance the quality of the study tours organized by them, the TIC issued a directive on "Code of Business Practice on Study Tours" in March 2006 which sets out in detail areas where travel agents need to pay attention to and comply with

when organizing study tours. For example, travel agents must assign tour escorts who are holders of Tour Escort Pass to accompany all study tours, specify the ratio of tour escorts to tour participants, and provide customers with comprehensive information of the study tours, such as the host organization, details of the teaching and extra-curricular activities, location of accommodation, and so on. The directive has also attached and made reference to the "Guidelines on Study Tour outside HKSAR" issued by the Education and Manpower Bureau. The TIC will closely monitor the situation to ensure travel agents' compliance with the relevant directive. According to the TIC's regulations, if a member travel agent is found to be in breach of the TIC's directive, it will be warned or fined by the TIC. For repeated cases, the travel agent's membership with the TIC may be suspended or revoked, which may lead to suspension or revocation of its licence by the Registrar.

Patent Application Grant Scheme

15. **MR SIN CHUNG-KAI** (in Chinese): *President, the Innovation and Technology Commission (ITC) implements the Patent Application Grant Scheme (the Scheme) and has appointed the Hong Kong Productivity Council (HKPC) as the implementation agent. In this connection, will the Government inform this Council:*

- (a) *of the measures adopted by the ITC to monitor the implementation and effectiveness of the Scheme;*
- (b) *whether it plans to commission more organizations or law firms to implement the Scheme for patent applicants to choose; and*
- (c) *whether it will expand the funding model of the Scheme by reimbursing part of the patent application fees to those local companies or individuals who have applied for and obtained patents at their own expense?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Chinese): President, the Scheme assists companies and individuals who have

never applied for any patents to make their first application by providing financial assistance and professional advice. The Scheme seeks to support local companies and inventors to protect their intellectual properties through patent applications, and promotes a culture of innovation in the society and relevant industries.

Regarding the Honourable SIN Chung-kai's specific questions:

- (a) To monitor the implementation and effectiveness of the Scheme, the ITC requires the HKPC to submit monthly and half-yearly progress reports on the operation, progress and implementation problems of the Scheme encountered during the report period. To ensure the smooth operation of the Scheme, the ITC also have regular meetings with the HKPC regarding the implementation and problems of the Scheme.

From April 1998 to end of March 2006, a total of 1 374 applications for grant were received. The stable number of applications over the years (see Table 1) demonstrates that there is a sustained demand for the Scheme. Of these applications, 546 have been approved for proceeding to the relevant patent application procedures, and 91 applications are being processed. Among the approved applications, patents have been successfully obtained for 232 cases. Besides, 154 inventions of the approved applications have been successfully commercialized into products or technology for market adoption. This shows that the Scheme has been progressing well and has achieved the objective of encouraging local inventors to protect their intellectual properties through patent registration.

- (b) As the implementation agent of the Scheme, the HKPC is responsible for educating the applicants in their patent applications. It conducts patent searches for the applications and performs initial technical assessments on the patentability of the inventions. After the applications have been approved after the initial screening, it assists the applicants to compile the necessary documents and represent them in liaising with the patent agents. In order that the relevant work can be conducted in a professional, impartial and objective manner, that the applicants receive appropriate advice, and that abusive use of the Scheme is guarded against, the

Administration considers it appropriate for the HKPC, being a neutral and non-profit-making organization, to be the implementation agent of the Scheme. We do not have plans to commission more organizations or law firms to implement the Scheme at this stage.

Under the Scheme, approved applicants may appoint patent agents (including a law firm) of their choice to prepare patent applications to the relevant Patent Offices.

- (c) As the Scheme only covers first-time applications for patents and seeks to assist the applicants to understand and prepare the applications through the support and participation of the implementation agent (see part (b) of the reply), we consider the current arrangement appropriate and will not revise the current operation model by reimbursing part of the patent application fees to those local companies or individuals who have applied for and obtained patents at their own expense.

Table 1

<i>Period</i>	<i>Number of applications</i>
1 April 1998 - 31 March 1999	175
1 April 1999 - 31 March 2000	190
1 April 2000 - 31 March 2001	125
1 April 2001 - 31 March 2002	185
1 April 2002 - 31 March 2003	177
1 April 2003 - 31 March 2004	199
1 April 2004 - 31 March 2005	169
1 April 2005 - 31 March 2006	154
Total	1 374

Setting up of Nursing Academy

16. **MR LI KWOK-YING** (in Chinese): *President, it has been reported that the nursing sector is planning the setting up of a nursing academy to accredit the specialist qualifications of nurses. In this connection, will the Government inform this Council:*

- (a) *whether it has taken the initiative to discuss the above matter with members of the nursing sector; if it has, of the details of the discussions; if not, the reasons for that; and*
- (b) *how it will offer support to the nursing sector in terms of site selection, policies, funding, and so on, together with a timetable in this respect?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese):

President, the Administration understands that the nursing sector is now holding extensive consultation and discussion on the development of nursing specialties and the setting up of a nursing academy. We in principle support the development direction proposed by the nursing sector as the development of nursing specialties would help enhance professional standards of nurses and hence improve the overall standard of Hong Kong's health care services for better protection of public health.

Specialization in nursing is an important milestone in the professionalization of the nursing profession. For effective promotion of the cause, the proposal must have the wide support, participation, consensus and commitment of the sector. The Administration is aware that members of the nursing sector come from different professional background and different institutions and organizations. They may have different expectations on the development of nurse specialties. In this connection, we hope that the proposal put forward by the nursing sector would be able to reflect the overall consensus of the sector. Our reply to the questions is as follows:

- (a) Earlier on, the nursing sector submitted to the Administration a framework proposal outlining the development direction of nursing specialties. We understand that the nursing sector is now holding further discussion on the development proposal and will submit a detailed proposal for the Administration's consideration. We will be pleased to consider the proposal to be submitted by the sector.
- (b) If recommendations concerning site selection, policies and funding are included in the proposal put forward by the nursing sector, the Administration will study and consider them actively with a view to

providing the sector with appropriate support. The development of nursing specialties is a very important step for the nursing sector to raise their professional standards. Under the premise of professional autonomy, enthusiastic support of and participation in the proposed development from the nursing sector is of utmost importance, including continuous financial commitment to operation of the nursing academy in the long run.

Installation of Airbags in Taxis

17. **DR RAYMOND HO** (in Chinese): *President, it has been reported that in a head-on collision between a private car and a taxi earlier on, while the driver and passenger of the private car were protected by the automatically inflated safety airbags and sustained slight injuries only, the taxi driver and passenger died in the accident because airbags were not installed in the taxi. In this connection, will the Government inform this Council:*

- (a) *whether it has considered legislating to require that safety airbags be installed in all taxis in Hong Kong; if it has, whether the authorities will consider providing subsidy to help alleviate the financial burden of installing airbags on taxi owners; and*
- (b) *of the ratio and respective numbers of taxis with and without safety airbags, and whether the number of taxis with safety airbags has been increasing over the past three years?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): President, currently, there is no legislation requiring safety airbags to be installed in vehicles in Hong Kong. We understand that it is not a statutory requirement in most overseas countries, including the European Union and Japan, which are the major sources of our vehicles, to install safety airbags in vehicles. They have also not set any standards for safety airbags. We will continue to keep in view overseas standards and latest developments of vehicle safety devices.

We do not have the statistics of taxis installed with safety airbags.

Industrial Accidents

18. **DR KWOK KA-KI** (in Chinese): *President, it is reported that the Labour Department (LD) closed the employment-related injury registration counters at accident and emergency (A&E) departments of hospitals from 1990 and require people who suffer injuries to notify the LD instead. In 1992, the LD also worked out a new compensation package with respect to minor employment-related injuries. Under the new package, if a person suffers an injury in an industrial accident and has been granted sick leave of more than three days but not exceeding seven days, and does not suffer permanent incapacity as a result of the accident, he/she is not required to undergo any assessment arranged by the LD. In this connection, will the Government inform this Council:*

- (a) *in respect of the past year, of the respective numbers of occupational injuries and industrial accidents and the respective injury rates per 1 000 employees and workers, as well as the method for calculating such rates, including the definitions of the units involved in the calculation, and the respective data for these units; and the changes in the calculation methods and definitions adopted before and after 1992 as well as the reasons for those changes;*
- (b) *whether the LD has reviewed the abovementioned changes in 1990 and 1992 regarding the notification system for employment-related injuries, and how it will assess the effects of such changes on the compilation of statistics on minor injury cases and the overall industrial accidents;*
- (c) *as the LD used to publish various information on industrial accidents, including the sex of the injured and their distribution by industries, in its annual reports prior to 1992, of the reasons for the LD not listing such information in its annual reports thereafter, together with details of the information involved; and*
- (d) *whether the LD has established a statistical database on industrial accidents, including the distribution of the types of companies and injury assessments involved; if it has, whether it will make the database accessible to the public and academics, and thoroughly study and analyse the causes and profiles of industrial accidents in Hong Kong every year?*

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

- (a) The occupational injuries and industrial accidents figures for 2005 are as follows:

Table 1 : Occupational injuries in 2005

Fatal occupational injuries	187
Non-fatal occupational injuries	44 080
Total occupational injuries	44 267
Injury rate per 1 000 employees	17.8

Occupational injuries (including industrial accidents) are injury cases arising from work accidents, resulting in death or incapacity for work of over three consecutive days, and reported under the Employees' Compensation Ordinance (ECO).

Injury rate per 1 000 employees is calculated as follows:

$$\frac{\text{Number of occupational injuries}}{\text{Persons engaged in all economic activities}} \times 1\,000$$

Table 2 : Industrial accidents in 2005

Fatal industrial accidents	29
Non-fatal industrial accidents	16 888
Total industrial accidents	16 917
Accident rate per 1 000 workers	30.6

Industrial accidents refer to injuries and deaths arising from industrial activities in industrial undertakings as defined under the Factories and Industrial Undertakings Ordinance.

Accident rate per 1 000 workers is calculated as follows:

$$\frac{\text{Number of industrial accidents}}{\text{Persons engaged in relevant industries}} \times 1\,000$$

Persons engaged are based on the "Quarterly Report of Employment and Vacancies Statistics" published by the Census and Statistics Department (C&SD).

There has not been any change to the methodology for compiling work injury statistics since it was first adopted. The only exception is that, since 1 January 1998, the LD has used the date of occurrence of an injury as the basis for computing work injury statistics instead of the date of reporting in order to reflect more accurately the number of work injuries occurring in the year.

- (b) Under section 15 of the ECO, employers are required to notify the Commissioner for Labour of fatal and non-fatal work injuries within seven days and 14 days respectively after the accidents.

Prior to 1990, the LD stationed clerical staff in the A&E Department of major public hospitals during office hours to assist injured employees. Such arrangement was discontinued in 1990. Since then, the LD has strengthened communication and co-operation with medical social workers of public hospitals in assisting needy injured employees.

The ECO was amended in 1992 to allow an employer to enter into direct agreement with his injured employee on the compensation payable under the ECO if the work accident results in sick leave of more than three days but not exceeding seven days and without permanent loss of earning capacity. Since employers are still required to report all work injuries to the Commissioner for Labour, these changes have not affected the reporting of work injuries or the compilation of accident statistics.

- (c) The LD has adopted a new format for compiling the "Report of the Commissioner for Labour" since 1992 in order to put labour issues in a wider perspective against the overall economic and labour scene of Hong Kong.

Under the new format, six work injury statistical tables were replaced by three new tables. Details are shown below:

<i>Tables deleted</i>	
1.	Comparison of accident figures for the past two years
2.	Reported number of injured employees by economic activity and cause
3.	Reported number of injured employees by sex, age group, nature of activity involved and cause
4.	Industrial accidents by economic activity and cause
5.	Industrial accidents by type of accident and cause
6.	Industrial accidents by type of accidents and industries
<i>Tables added</i>	
1.	Number of occupational accidents for the past five years
2.	Number of occupational accidents in major industries for the past five years
3.	Number of occupational accidents by cause for the past five years

- (d) To enhance the efficiency and capability in compiling occupational safety and health statistics, the LD acquired new computer equipment, developed new computer programmes and set up new database in 1998. As the database contains a large amount of personal data, it is not suitable for the public to have access to it.

Nonetheless, the LD has uploaded all occupational safety and health statistics to the LD's homepage for reference by members of the public. These statistics include occupational injuries; industrial accidents; injury rate per 1 000 employees; accident rate per 1 000 workers; and statistics analysed by "Major Economic Activity" and "Type of Accident".

In addition, the LD publishes annually an "Occupational Safety and Health Statistics Bulletin" and releases the relevant accident statistics on the "Hong Kong Monthly Digest of Statistics" of the C&SD on a quarterly basis.

For statistics on the number of direct agreements made between employers and injured employees and assessments of loss of earning capacity conducted for employees, they are available in the LD's Annual Report which is also uploaded to the LD's homepage.

Regulation of Broadcast on Public Transport

19. **MR LEUNG YIU-CHUNG** (in Chinese): *President, regarding the regular broadcast of information through electronic screens on public buses, light buses and train compartments of the Kowloon-Canton Railway Corporation (KCRC), will the Government inform this Council whether:*

- (a) it has studied how similar devices are regulated overseas; if so, whether it will tighten up the regulation of the broadcast of information mentioned above by making reference to overseas practice in this respect;*
- (b) it will consider establishing proper channels for receiving complaints from passengers about nuisances caused by the abovementioned broadcast or the broadcast of false information; if so, whether the number of such complaints will be one of the considerations in determining whether or not to approve the renewal of the franchises or licences of the organizations or operators concerned;*
- (c) it will consider making it a mandatory requirement that the organizations or operators concerned must designate a reasonable quiet zone on train compartments or vehicles before they are allowed to install such electronic broadcasting devices on the vehicles; and*
- (d) it will consider amending the Broadcasting Ordinance to regulate the information broadcast on vehicles or trains compartments?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Chinese): President,

- (a) We have not specifically conducted any study on overseas regulation of on-board information display installations in public transport vehicles. At present, regulation of such installations in public buses and public light buses (PLBs) in Hong Kong, such as the materials and location of electronic display screens, is governed by the Road Traffic (Construction and Maintenance of Vehicles)

Regulations (Cap. 374 sub. leg.). On granting new franchises to bus companies, the Government has included a provision which requires prior approval from the Transport Department (TD) before information display systems could be installed on buses. Similarly, the conditions of passenger service licences issued to PLB operators specify that prior approval from the TD is required for installation of information display systems. As regards railways, before information display services are introduced on trains, the railway corporation concerned has to prove to the Hong Kong Railway Inspectorate under the Environment, Transport and Works Bureau and the TD that the provision of such services will not affect the normal and safe operation of railways.

As regards the content of the programmes, according to the existing legislation, operators showing pre-recorded information programmes in their public transport vehicles must comply with the requirements under the Film Censorship Ordinance (Cap. 392). Such programmes have to be submitted to the Television and Entertainment Licensing Authority for examination before public exhibition.

- (b) At present, any passenger who considers the sound volume of information programmes in a public transport vehicle excessive or causing nuisance may lodge complaints through the various established channels, such as the TD, Transport Complaints Unit, government hotline and the relevant public transport operators. Upon receipt of passengers' complaints or feedback, the Government will request the operators concerned to follow up and put in place improvement measures, including adjustment of sound level, enhancement to audio quality and improvement to quiet zones arrangement. In respect of the sound volume of information programmes on buses and green minibuses (GMBs), the TD will conduct surprise checks and require the operators concerned to make improvement if the sound volume is considered excessive.

In processing applications for bus franchise and GMB service licence, the Government will consider the overall service performance of the companies concerned and their capability to continue providing satisfactory transport services. Passengers'

complaints against bus and GMB service operators, including complaints about information display services, will be one of the considerations. As regards the KCRC, the Government will monitor passengers' feedback on its railway services including that on information display, and if necessary, require the railway corporation to put in place improvement measures. The railway corporation will also review their services from time to time for continuous service improvements.

- (c) The Government has already asked public transport operators to take full account of the different needs of passengers when providing information display services in their vehicles. On this, quiet zones are provided in most of the public transport vehicles which display information programmes.

A quiet zone is designated at the rear of the lower deck of franchised buses and only one speaker is installed at the lower deck for displaying information programmes. For the KCRC, two compartments for each East Rail train are designated as Quiet Cars, and one section of the First Class Compartment the Quiet Zone. Both West Rail and Ma On Shan Rail have designated one compartment for each train as the Quiet Car. All Quiet Cars are at the middle section of the train. There are directory signs indicating the quiet zone at the platform and inside train compartments for easy identification by passengers.

As regards GMBs, while designation of quiet zones is not feasible due to the size constraint of vehicle compartments, operators are required to install an ON/OFF switch for each speaker so that passengers can make a choice.

- (d) At present, the provision of television programme services for domestic premises or hotel rooms requires a licence under the Broadcasting Ordinance (Cap. 562). However, television programmes solely for display in public places, including outdoor media, are not subject to the regulation of the Broadcasting Ordinance. To our understanding, no jurisdictions of advanced countries or economies regulate outdoor media as broadcasting services. We do not consider it appropriate to amend the Broadcasting Ordinance to regulate such media.

Hospital Authority to Employ Additional Community Nurses

20. **DR JOSEPH LEE** (in Chinese): *President, it has been reported that the Hospital Authority (HA) will employ additional community nurses next year. In this connection, will the Government inform this Council:*

- (a) of the expenditure on community nursing services in each of the past three years;*
- (b) whether it has assessed the effectiveness of community nursing services over the past three years; if it has, of the assessment results;*
- (c) of the respective numbers of community nurses in the general and psychiatric streams and the ratio of community nurses to patients in each hospital cluster at present;*
- (d) of the criteria adopted by the HA for working out the demand for community nursing services, and whether the HA has set a target ratio of community nurses to patients and regularly reviews the ratio;*
- (e) of the expenditure involved in the HA's plan to employ additional community nurses; and*
- (f) whether it has made any prediction on how the quality and development of community nursing services will be enhanced as a result of employing additional community nurses?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese):

President, the HA provides a range of in-patient and ambulatory care services to meet the health care needs of the community. The provision of community nursing service is part of the community-based health care delivery approach to support the care of those who need such services in the community. The aim is to empower such persons in self-care, improve health and reduce hospital dependency. Provision of community nurses and community nursing service in a particular geographical area or hospital cluster depends on a number of factors such as the care delivery model, the make-up of a health care team, the availability of local community resources such as volunteer carers,

non-governmental organizations and primary care providers, as well as provision of old age homes in the area.

My answers to the questions asked are as follows:

- (a) Expenditure on community nursing service in each of the past three years is as follows:

	<i>2003-04</i>	<i>2004-05</i>	<i>2005-06</i>
Expenditure (\$Million)	252	243	240

The reduction in the expenditure between 2003-04 and 2005-06 was due to the pay cut exercise in line with that in the Civil Service.

- (b) In line with the strategy for a community-based health care delivery approach, the HA hospital clusters assess the need for community-based services based on specific patient needs and programmes. A range of outcome indicators are being used and continuously refined for measuring the effectiveness of community-based services, such as early discharge of patients, as well as reduction in hospital readmission and accident and emergency attendance. An example illustrating the effectiveness of the services is that the average length of stay for mastectomy patients in some hospitals has been shortened from eight to nine days to four to five days.

- (c) and (d)

The total numbers of community nurses and community psychiatric nurses in the HA as at the end of March 2006 are 385 and 110 respectively. Breakdown of their numbers in each hospital cluster is as follows:

<i>Cluster</i>	<i>No. of Community Nurses</i>	<i>No. of Community Psychiatric Nurses</i>
Hong Kong East	53	12
Hong Kong West	26	7
Kowloon Central	27	8

<i>Cluster</i>	<i>No. of Community Nurses</i>	<i>No. of Community Psychiatric Nurses</i>
Kowloon East	79	10
Kowloon West	111	31
New Territories East	45	18
New Territories West	44	24
Total	385	110

Community nurses in the HA have made a total of 792 810 homes visits in 2005-06 to provide services to those in need in the community. Since the community psychiatric nursing service has been integrated with the community psychiatric team to form the community psychiatric service, there are no separate visit statistics for community psychiatric nurses.

The community nursing service in the HA provides care to an average of some 10 000 persons in need of such service in the community at any one time. These persons have diverse needs. The service volume, service location, care complexity and intensity for these persons vary because of their health conditions, nature of their social background and availability of family support and community resources. It would not be meaningful to interpret or devise any target ratio of nurses to patients on its own without reference to the aforementioned factors. The assessment of demand for community nursing service is an evolving and dynamic process. As such, the HA has empowered the hospital clusters to flexibly deploy resources to serve those in need of such service in the community based on the different social environment and to encourage the use of available community services in the local community.

- (e) The HA estimates that \$242 million will be allocated for running community nursing service in 2006-07, representing an additional provision of \$2 million as compared with that of the 2005-06. Hospital clusters may employ additional community nurses taking into account the availability of resources and relevant services within their catchment areas as well as the service needs.

- (f) The HA values the contribution of community nurses in empowering patients in self-care, improving health and reducing hospital dependency. Additional community nurses will further enhance the quality and service volume of the community nursing service, which has a definite role in the community-based health care service model, particularly in addressing the ageing population problem.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bill: First Reading.

SUPPLEMENTARY APPROPRIATION (2005-2006) BILL

CLERK (in Cantonese): Supplementary Appropriation (2005-2006) Bill.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

SUPPLEMENTARY APPROPRIATION (2005-2006) BILL

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move that the Supplementary Appropriation (2005-2006) Bill be read the Second time.

Section 9 of the Public Finance Ordinance provides, "If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be

introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates."

The account for the 2005-06 financial year has come to a close. Despite the saving in overall government expenditure, the expenditure charged to nine out of all the 81 heads was in excess of the sum appropriated for the respective heads. The amount of supplementary provision for all the expenditure in excess has been approved by the Finance Committee or under the powers delegated by it.

The Supplementary Appropriation (2005-2006) Bill is hereby introduced into the Legislative Council to seek final legislative authority for the supplementary provision in respect of the nine heads totalling about \$1.3 billion.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (2005-2006) Bill be read the Second time.

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

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Freight Containers (Safety) (Amendment) Bill 2006.

FREIGHT CONTAINERS (SAFETY) (AMENDMENT) BILL 2006

Resumption of debate on Second Reading which was moved on 26 April 2006

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Freight Containers (Safety) (Amendment) Bill 2006 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Freight Containers (Safety) (Amendment) Bill 2006.

Council went into Committee.

Committee Stage

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

FREIGHT CONTAINERS (SAFETY) (AMENDMENT) BILL 2006

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Freight Containers (Safety) (Amendment) Bill 2006.

CLERK (in Cantonese): Clauses 1 to 4, 8, 9, 10, 12, 13, 14 and 16 to 30.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 5, 6, 7, 11 and 15.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam Chairman, I move that clauses 5, 6, 7, 11 and 15 of the Freight Containers (Safety) (Amendment) Bill 2006 be amended, as set out in the paper circularized to Members. These proposed amendments have taken into account the views of the Legal Service Division of the Legislative Council Secretariat and received its agreement.

Clauses 5, 11 and 15 are amended to make textual improvements to the proposed section 4(3), sections 4(3)(a), (b), (c), sections 10A(3)(a), (b), (c), and section 17A(2), so as to make these sections consistent with other relevant sections.

Clauses 6 and 7 are amended to indicate clearly that an authorized person may charge fees for approving containers and may specify the amount of fees and the manner of payment.

Thank you, Madam Chairman.

Proposed amendments

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 7 (see Annex I)

Clause 11 (see Annex I)

Clause 15 (see Annex I)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Economic Development and Labour be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 5, 6, 7, 11 and 15 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

FREIGHT CONTAINERS (SAFETY) (AMENDMENT) BILL 2006

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the

Freight Containers (Safety) (Amendment) Bill 2006

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Freight Containers (Safety) (Amendment) Bill 2006 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Freight Containers (Safety) (Amendment) Bill 2006.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Securities and Futures (Amendment) Bill 2005.

SECURITIES AND FUTURES (AMENDMENT) BILL 2005

Resumption of debate on Second Reading which was moved on 6 April 2005

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I would like to speak in my capacity as Chairman of the Bills Committee on the Securities and Futures (Amendment) Bill 2005 and submit its report.

The Bills Committee has held a total of nine meetings to examine the Securities and Futures (Amendment) Bill 2005 (the Bill), and considered the views presented by a number of individuals and organizations, including the Securities and Futures Commission (SFC). The deliberations of the Bills Committee have been accounted for in detail in the written report, so I am not going to repeat them.

The Bill seeks mainly to amend the Securities and Futures Ordinance (SFO) with a view to separating the role of the SFC Chairman from that of the executive arm. Under the proposed split model, the Commission will be led by a Chairman who will have no executive responsibility for the day-to-day running of the SFC, while the executive arm will be headed by a Chief Executive Officer (CEO).

The Bills Committee has examined the proposed arrangements under the new governance structure, as well as its implications on the future operation of the SFC. Given that the SFO has only come into operation since 1 April 2003, some members have expressed concern about the need for the proposed change

and considered it undesirable to implement the splitting proposal in haste. Meanwhile, the Bills Committee also notes that, apart from one submission which has expressed disagreement, most of the depositions have indicated support in principle for the splitting proposal.

The Bills Committee has expressed grave concern about the respective roles and responsibilities of the SFC Chairman and the CEO. The Bills Committee has also noted the concern expressed by the SFC about accountability and how the actual functions could be split between the SFC Chairman and the CEO. The Administration has decided against stipulating the division of roles and responsibilities in legislation for the reason that the details may evolve over time. Furthermore, it is not a common practice for other regulatory bodies to stipulate in their governing legislation the division of work of the chairman and the CEO. Some members have expressed strong reservations about being asked to pass the Bill without knowing the details of the delineation of work between the SFC Chairman and the CEO in future. To this effect, the Administration and the SFC have, after a considerable period of negotiation, finally decided to submit the details of the proposed division of roles and responsibilities to the Bills Committee for reference. Despite the Administration's decision not to stipulate the division of responsibilities in the Bill, the relevant details will be attached to the appointment letters of the SFC Chairman and the CEO and uploaded onto the SFC's website. The Bills Committee has also discussed the arrangement for acting arrangements for the SFC Chairman and the CEO under the split model.

The Bills Committee is particularly concerned about the proposed amendment to section 11(1) of the SFO, that the Chief Executive should consult the CEO, instead of the SFC Chairman as currently required before issuing written directions to the SFC. Some members consider that the future SFC Chairman, being responsible for the overall policies and directions of the SFC, should not be left out in the consultation process. They also query the propriety of relegating the consultation requirement to the level of CEO. As the Administration has decided to maintain its current proposal, there has been considerable discussion by the Bills Committee on whether and how section 11(1) of the SFO should be amended to strengthen the consultation requirement. Furthermore, grave concern has been raised about whether the reserve power under section 11(1) would become a tool for the Government to interfere with the operation of the SFC. The Bills Committee has also discussed whether such reserve power under the SFO can be removed by deleting existing section 11

altogether in the context of the current Bill. In the absence of any collective view reached by the Bills Committee, it has been agreed that it would be for individual members to decide whether they would propose amendments to section 11 of the SFO as appropriate.

With regard to the SFC's accountability to the legislature, some members consider that reference should be made to section 9 of the Urban Renewal Authority Ordinance and section 6A of the Kowloon-Canton Railway Corporation Ordinance to add a provision requiring the SFC Chairman and the CEO to attend the meetings held by the committees of the Legislative Council and answer Members' questions. In the light of members' concern, the Administration proposes including the requirement of attending meetings of the committees of the Legislative Council, where requested and appropriate, in the duty lists of the SFC Chairman and the CEO. Nevertheless, some members maintain their preference for a statutory obligation, instead of merely an administrative requirement in the duty lists. Some other members however agree that to allow for a certain degree of flexibility, it may not be necessary to specify the attendance requirement in law having regard to the co-operation displayed by the SFC so far and its status as an independent market regulator.

Regarding the appointment of the future SFC Chairman under the split model, the Bills Committee has conducted detailed discussion on such issues as the selection of candidates, full-time or part-time nature of the post, remuneration, and so on. Some members and deputations concur on the need to appoint a person with the necessary expertise and experience to take up the chairman post. Where necessary, the Administration should conduct a global search instead of limiting its search to a small pool of candidates as in the case of making appointments to advisory and statutory bodies. Furthermore, some deputations and members share the view that the remuneration for the future SFC Chairman should be set at a competitive level commensurate with the level of responsibility of the post, instead of at the level of the proposed token remuneration. The Administration however considers that for individuals with a commitment to serve Hong Kong, remuneration is not their prime consideration. In this connection, particular concern has been raised about whether the Administration will be able to appoint a person possessing the necessary competence and commitment to take up the SFC chairman post.

The Bills Committee agrees that the independence of the future SFC Chairman has a significant implication on the credibility of the SFC. In this

connection, the Bills Committee has discussed with the Administration safeguards against conflict of interests to avoid any conflict of interests between the roles of the future SFC Chairman and his/her past or current employment/connections. The Bills Committee notes that, in addition to the statutory safeguards applicable to SFC members under existing law, there are additional requirements on the future SFC Chairman that he/she should not be a director in any listed company in Hong Kong; and should not have any material interest in any principal business activity related to individuals or organizations regulated by the SFC, or be involved in any material business dealing. Concern has been raised about the efficacy or otherwise of the additional safeguards as they are not statutory requirements. While the Administration has decided to include them in the terms of appointment of the prospective Chairman, it does not consider it necessary to include the additional safeguards in law because under the existing law, criminal penalties have been imposed for non-compliance with the secrecy and avoidance of conflicts requirements.

While Committee stage amendments (CSAs) will be moved by the Administration to the Bill, no CSAs will not proposed under the name of the Bills Committee.

Madam President, next I will express the views of the Democratic Party on the Bill. The Democratic Party supports the passage of the Bill as well as the separation of the functions of the Chairman and those of the CEO. In considering the desirability of the division, overall policies should be considered. In recent years, Members keeping in view the practice of some so-called regulators will know that in Britain — I emphasize Britain — different regulators, including the Financial Services Authority (FSA), which is responsible for financial affairs, have already split the relevant posts. Over the past several years, regulators responsible for other affairs, such as telecommunications or fair competition, have split all the relevant posts into two, one for the chairman and another for the CEO.

In deliberating the policy, the Democratic Party has taken into account the case of the SFC, as well as the propriety of Hong Kong following the British model in future by separating the governance structure of all its statutory organs (particularly regulators) into two posts, one for the chairman and another for the CEO. On this premise, we will support today's amendments. Policy-wise, the Democratic Party approves of similar arrangements and hopes that the Government can continue with the separation of the roles of the chairman and the

CEO for all regulators. On this premise, I think the Government can do even better in the context of the Ordinance. Britain has been more rigorous than Hong Kong in appointing part-time individuals to these posts, be they chairmen or non-executive directors. Therefore, the Government should review the existing practice of selecting candidates. Specifically, the Government should listen to the views expressed in a debate in this Council several weeks ago on making appointments to boards and committees. However, we should not vote against the Bill simply on the ground that the review has yet to be conducted. Therefore, we will support the Bill. Meanwhile, we hope the Government will, after the passage of the Bill, review the existing practice of making appointments to boards and committees. I also hope the Government will pay particular attention in appointing the new SFC Chairman. The Government might undertake during the Second Reading of the Bill to, *inter alia*, include more requirements to the appointment letter of the new SFC Chairman.

Members may note that a meeting was held a couple of weeks ago in this Council to discuss the chairmanship of the Hong Kong Exchanges and Clearing Limited (HKEx). The new Chairman of the HKEx, Mr Ronald ARCULLI, is not only the executive director of seven or eight listed companies, he is also Chairman of an exchange responsible for front-line regulation of listed companies. Despite the absence of requirements in law prohibiting the HKEx Chairman from becoming the director of any companies, it is sometimes extremely important to rid people of such concern. Hence, the Government should do better in selecting candidates to fill the post of SFC Chairman in future. I hope the Government can make reference to Britain's Nolan Principles in selecting appointees. The Principles are a relatively modern approach of selecting members to boards and committees. As this issue has been debated by Members a couple of weeks ago, I do not intend to repeat it here.

CSAs, particularly relating to section 11, will be proposed today. As Mr Ronny TONG has been engaged by the Court, Ms Audrey EU will propose the CSA on his behalf. I would like to take this opportunity to say a few words on the CSA. Actually, a CSA was proposed by Ms Margaret NG to delete section 11 altogether when the existing legislation was passed in 2000. Of course, we are aware that today the President has ruled against Ms NG's CSA because it is beyond the scope of amendment. However, we will still support Ms NG's notion. As a regulator should be independent, the Chief Executive should not have reserve power. Given that Ms NG is not allowed to propose her CSA, we will support Mr Ronny TONG's CSA.

Mr Ronny TONG's CSA seeks to require the Chief Executive to, in exercising the power, consult the SFC Chairman, in addition to the CEO. I consider it worthwhile to support the CSA for two major reasons: First, the SFC Chairman's original functions encompass the functions of both the Chairman and the CEO. Upon the split, the significance of the two functions should be retained; second, as we consider that the Chief Executive should try, as far as possible, not to exercise the power or refrain from exercising the power, the exercise of such power by the Chief Executive should be subject to adequate checks and balances such that, apart from consulting the CEO, as suggested by the Government, the Chief Executive has to consult the Chairman as well. We will therefore support Mr TONG's CSA.

Furthermore, discussion has been held by the Bills Committee on the remuneration of the Chairman. I would like to say a few words on this topic too. The determination of remuneration is very complex in the sense that we have often found the issue contradictory too. I have once openly stated that, according to the Government's view, the setting of the remuneration of the SFC Chairman at \$700,000 or so, which is quite generous, is already higher than the remuneration of Members of the Legislative Council. However, some colleagues hold the view that a person who is willing to take up the post of SFC Chairman by receiving a remuneration of \$700,000 per annum will definitely not find the remuneration attractive, but has done so probably for other purposes, such as political purposes or hidden benefits. For these reasons, the remuneration should be set at a more reasonable level so that the person who is going to take up the post will think that his or her responsibilities are commensurate with his or her remuneration. Setting the remuneration level at \$700,000 or so is therefore not at all appropriate.

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

During a visit of the CEO of Britain's FSA to Hong Kong during the Lunar New Year, I had a 45-minute meeting with him. It is usual practice for us to give overseas visitors an introduction and a chance to raise questions to let them gain an understanding of Hong Kong. That meeting turned out to be just the opposite. I was apparently joined by Ms Emily LAU and, during the meeting, we raised a lot of questions, one of which concerning remuneration. At present, Britain's FSA is the world's largest regulator. Though I dare not

describe it as a model, it is the largest financial regulator in terms of power. The remuneration of its Chairman — it is mentioned in the document — representing 40% to 50% of that of its CEO, is definitely not in the region of \$700,000, or even \$1 million.

The current remuneration of the SFC Chairman is about \$6 million or \$7 million — this figure is estimated by me according to the market trend, for I have not read the latest annual report. Even 40% of the remuneration amounts to more than \$2 million. Sometimes, we have to be reasonable with remuneration. How can an annual remuneration of \$700,000 attract talents to take up the post? The answer is probably in the negative. It may even be impossible to identify such talents. But why are we willing to be Members of the Legislative Council when our annual remuneration is just around \$600,000 or \$700,000? This is because we do have political motives. For instance, for the sake of campaigning for democracy, we have to join this Council to pursue democracy or improvement in people's livelihood. However, should we require anyone who takes up the post of SFC Chairman to have political motives as well? The Government should ponder this issue.

Furthermore, I hope the remuneration of the SFC Chairman can be determined with flexibility, instead of being capped at \$700,000 or so. We think the post should not be turned into one of those reserved for retired government officials or — I am not sure whether this term should be used — the "Prince Gang". Actually, the SFC Chairman has enormous responsibilities; yet the reward for the post is miserable. He or she is going to face immense difficulties as well.

Deputy President, today the Democratic Party will support the Bill, as well as the amendment proposed by Ms Audrey EU on behalf of Mr Ronny TONG.

I so submit.

MR CHAN KAM-LAM (in Cantonese): Deputy President, on behalf of the DAB, I express its support for the Securities and Futures (Amendment) Bill 2005 (the Bill). We agree with the proposal in the Amendment Bill to separate the role of the Chairman of the Securities and Futures Commission (SFC) from that of the executive arm and delineate the work of the two clearly. We believe this will serve to improve the governance structure of the SFC and also have a

positive effect on enhancing its accountability and efficiency. Furthermore, internationally, this will also be consistent with the practice of advanced countries since the Financial Services Authority (FSA) of the United Kingdom and the Swedish Financial Supervisory Authority also introduced similar arrangements in 2003.

In fact, the majority of public bodies in Hong Kong, such as the Mandatory Provident Fund Schemes Authority, the Airport Authority, the Kowloon-Canton Railway Corporation and the MTR Corporation Limited have adopted this design of separating the role of the chairman from the Chief Executive Officer (CEO). All along, their operation has been very smooth, therefore, the amendment in this Bill to separate the role of the Chairman and the CEO is in line with the existing trend.

In the course of scrutiny, the Bills Committee consulted various academics and professional bodies. Most of them agree with the amendment on this occasion, on condition that the change made to the system will serve to improve the quality of governance and efficiency, and that the Chairman and the CEO must both have good knowledge of the securities and futures business and maintain close ties with the sector. In addition, one view voiced the concern that after splitting the roles of the Chairman and the CEO, there may be duplications in the duties of the two, thus affecting the operation of the SFC. In particular, when the Chairman and the CEO have differences in opinion in making policy decisions, this may have undesirable implications.

I believe the Government must pay close attention to the duties and responsibilities of the Chairman and the CEO after the proposed split and co-ordinate the duties and responsibilities of the two properly to avoid the occurrence of incidents similar to that which occurred in the KCRC, which will not just deal a blow to internal morale but also give the public a very bad impression, thus affecting the status of the financial industry in Hong Kong. Therefore, the co-ordination of the work of the Chairman and the CEO and the choice of candidates are very important to the SFC after the changes are introduced to the structure of the SFC. The Government must proceed very cautiously.

In the course of scrutiny by the Bills Committee, Ms Margaret NG and Ms Audrey EU of the Civic Party proposed respective amendments. Since Ms NG's amendments involve amending the entire piece of legislation, it is only to

be expected that the President ruled that they are inconsistent with the Rules of Procedure. Concerning Ms Audrey EU's amendment, we consider it to be unnecessary. Ms EU believes that before giving written directions to the SFC, the Chief Executive should also give directions to the Chairman and consult him apart from giving directions to the CEO. We believe that this is totally unnecessary, since it is only in emergencies that the Chief Executive will issue directions direct. Moreover, we believe that the person to be consulted should be the CEO, who is versed in the daily operation of the SFC. In such circumstances, if it is necessary to further consult the Chairman, we are afraid that it will be counter-productive. Not only will doing so cause delays, it is also possible that differences in opinion may occur. In that event, it will be difficult for the Chief Executive to make decisions and a lot of unnecessary controversies will arise in future. In view of this, we consider it adequate for the Chief Executive to consult the CEO when giving directions.

Deputy President, after considering the foregoing, I believe it is necessary for the DAB to oppose Ms Audrey EU's amendment and support the Government's motion. I so submit.

MS MARGARET NG: Deputy President, by the present Bill, the Government seeks to split up the role of the Chairman of the Securities and Futures Commission (SFC).

Under the Bill, the Chief Executive is empowered to appoint a Chief Executive Officer (CEO) of the Commission. At the same time, the full-time executive Chairman under existing law will be replaced by a non-executive Chairman who carries out his responsibilities as a community service.

The independence, good governance and effectiveness of the SFC as regulator are of central importance to Hong Kong as an international financial centre enjoying the confidence of the international business community. The proposals under the Bill must be examined in that light.

In the course of the scrutiny of the Bill, several facts became clear to us:

- (1) The change is initiated entirely by the Government, on the ground of greater internal checks and balance and accountability. The Government claims that the split follows the trend at home and abroad.

- (2) There is no discernible demand from the market or the investing public. Nor is the change at the advice of the SFC. On the contrary, outgoing Chairman, Mr Andrew SHENG, told the Bills Committee that (and I quote) "The existing checks and balances on the Commission have worked well". (End of quote) While professing that he had no objection to the split in principle, Mr SHENG was frankly extremely concerned about the split model proposed under the Bill.
- (3) The so-called trend of splitting up the role of the Chairman in the Hong Kong Special Administrative Region (SAR) so far applied only to listed companies. The SFC is a regulator, and is totally different in its nature and function.
- (4) As for the development overseas, the Government prayed in aid the United Kingdom's Financial Services Authority (FSA). Effective as of September 2003, the office of its Chairman is split into two: a Chairman and a CEO. However, the FSA, unlike our SFC, is a "super regulator" encompassing all financial services, not just securities and futures. It is also clear from the facts that after the split, the Chairman of the FSA remains a full-time office with substantial remuneration, answering to Parliament and represent the FSA within the country and internationally.
- (5) In the observation of Mr SHENG, the model of a non-executive Chairman with a CEO only exists in some emerging markets. He believed that the change to this model will weaken the SFC's independence and standing as a regulator in the international forum of regulation.
- (6) Mr Michel PRADA, the then Deputy Chair of the Technical Committee of the International Organization for Securities Commissions (IOSCO) which is the standard setting body, considered that the proposed change raised two issues, one of which was whether the part-time position of the non-executive Chairman would impinge on the independence of the regulator.
- (7) Most of the highly knowledgeable deputations which made representations to the Bills Committee were extremely skeptical of

how the non-executive Chairman can work to advantage. They were clearly concerned about the possibility of a part-time amateur personally close to the Chief Executive and paid a salary reflecting the non-professional nature of the office.

- (8) The Hong Kong Stockbrokers Association, who supported the split and placed strong emphasis on the future Chairman's being (and I quote) "very much in tune with the particular needs of the local market", (end of quote) is nevertheless concerned about the potential conflict of interest of a local appointment.
- (9) In spite of these concerns, the Government's position remains the same: the Chairman will not be appointed by global sourcing and open recruitment, but by the ordinary system of appointments to advisory and statutory bodies, and will be paid a token remuneration of \$702,000 per annum — which is only slightly better paid than a Member of this Council. I think Mr SIN Chung-kai has given him too much money. By contrast, the Chairman of the United Kingdom Authority is paid over £300,000 (which is roughly HK\$4.5 million) per annum, and is recruited by open competition on Nolan Principle.

Deputy President, it is in this context — the context of the independence of the regulator — that I revisited the existing section 11 of the Ordinance: the Chief Executive's directions to the Commission. Let me remind Members the terms of the provision (and I quote):

"Subsection (1) After consultation with the chairman of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objective or the performance of any of its functions.

Subsection (2) The Commission shall comply with any written direction given under subsection (1).

Subsection (3) Where any written direction is given under subsection (1), any requirement under any other provision of this

or any other Ordinance that the Commission shall, for the purpose of performing any of its functions to which the written direction relates:

- (a) form any opinion;
- (b) be satisfied as to any matter (including existence of particular circumstances); or
- (c) consult any person,

shall not apply for all purposes connected with the performance of functions pursuant to, or consequent upon, the written direction.

Subsection (4) Written directions given under subsection (1) are not subsidiary legislation." (End of quote)

In the debate in this House on the Bill, I had spoken strongly against such a provision. Its very existence undermines the independence of the regulator. It bulldozes over the safeguards which hold the balance between the vast powers of the Commission and the free market. Such an outdated colonial power which was reserved to the Governor has no place in a modern regulatory system.

The present Bill further weakens the system. Under the existing section 11, a precondition of the Chief Executive exercising his power to direct the Commission is that he must first consult the Chairman. Hopefully, a strong independent Chairman will make it a resignation matter should the Chief Executive be so misguided as to use that power. His professional reputation and international standing will require him to do that. And the prospect of his resignation which will send a strong signal to the world, will hopefully deter the Chief Executive before he acts to do so. So, inadequate though it was, there is some sort of built-in checks and balance.

By splitting up the role of the Chairman and so far weakening his position, the present Bill makes that precondition no longer capable of being fulfilled. In my opinion, the only way to preserve the necessary balance is for the whole of section 11 to go. I cannot see how the present Bill can be supported if section 11 were to remain in these circumstances.

The present Chief Executive, Mr Donald TSANG, is himself a further cause for concern about the Bill. He has told this Council, in no uncertain terms, that he does not believe in being neutral and impartial in his appointment of persons of different political positions. He is bound to be closer to those who support his policy proposals and keep a distance with those who oppose, he said. He considers this to be natural and inevitable. By word and by deed, he has made clear to all that he will not tolerate opposition. Neither will he shrink from exercising the powers the letter of the law affords him to the fullest extent.

I had, therefore, attempted to propose an amendment to repeal section 11 in its entirety. Madam President has ruled against this being put forward on the ground that it is outside the scope of the Bill. I am bound by that ruling. But equally I must impress upon this House the evil of retaining section 11, in principle and in reality.

The Government has given notice that an amendment will be introduced at the Committee stage to section 11 of the Ordinance, so that instead of consulting the Chairman, the Chief Executive consults the CEO before exercising his power to direct. This further lowers the threshold. For, the CEO is a functionary — and I intend no disrespect to any incumbent of that office for that matter. I am merely describing the terms of his appointment. We are advised that the split puts him in the category of carrying out the daily executive functions, leaving such matters of policy and strategy to the now non-executive Chairman who will not now be consulted. It should be noted that under the provisions of section 11 as will be amended, the Chief Executive is required only to consult the CEO. He is not required to heed his advice, whatever it is.

The gateway is therefore open for interference on a day to day level with the function of the regulator, if the Government so chooses. It is a travesty of the rule of law to place the choice between respecting or disregarding all the safeguards and due process in a statute upon the decision of one man's view of what constitute "the public interest" at a given moment.

Deputy President, I oppose this Bill, and I urge Honourable Members to do the same.

MR JEFFREY LAM (in Cantonese): Deputy President, the Liberal Party supports the Securities and Futures (Amendment) Bill 2005 (the Bill). With

regard to the proposed amendment to section 11(1) of the Ordinance, an amendment is proposed to the effect that the Chief Executive should consult the CEO, instead of the Chairman of the Securities and Futures Commission (SFC) as currently required, before giving written directions to the SFC.

With regard to the split of the posts of Chairman and the CEO of the SFC, the Bills Committee on Securities and Futures (Amendment) Bill 2005 has, in fact, thoroughly discussed the roles and responsibilities of the two posts and how their responsibilities can be divided to avoid unclear delineation of responsibilities or *ultra vires*.

The new CEO will be tasked to oversee the day-to-day regulatory work of the SFC and so, he should know best the daily operation of the SFC. Moreover, he will maintain good contact with the Chairman, and report to the Board regularly with appropriate and timely information to facilitate the effective operation of the Board. In this connection, the Liberal Party considers that when section 11(1) is invoked in urgent or extreme circumstances, the CEO is the most suitable person to respond to the Chief Executive. The Government's amendment is appropriate.

With regard to Ms Audrey EU's amendment which proposes that when section 11(1) is invoked, the Chief Executive shall consult both the Chairman and the CEO of the SFC, the Liberal Party considers that if, under extremely pressing circumstances, the Chief Executive is still required to consult both the Chairman and the CEO and take actions only after receiving their response, I am afraid that it would prevent the Government from making responses promptly. For this reason, the Liberal Party supports the Government's amendment and does not support Ms Audrey EU's amendment.

Deputy President, I so submit.

MS EMILY LAU (in Cantonese): Deputy President, I speak in opposition to the Securities and Futures (Amendment) Bill 2005 (the Bill).

Deputy President, when the authorities proposed this Bill, it was professed that the aim was to reinforce the regulatory regime of the securities and futures market in Hong Kong to ensure the effective operation of the Securities and

Futures Commission (SFC). I certainly support this major principle. However, as Ms Margaret NG said, the demand for reform had not come from the sector — although some people in the sector have expressed their support — and still less did it come from the SFC, since we have held a number of meetings with the SFC and they have also submitted some papers. They said that in principle, they did not take issue with it, but they felt that they had to ask why it had to proceed so hastily and quickly. Deputy President, I have been thinking that this depends on the person involved. Why? Since Mr Andrew SHENG has left, the post is now vacant. However, if his move is a result of this development, I think things have gone a bit too far.

Deputy President, the Board of the SFC — Mr Jasper TSANG is also present and he is one of the Board members — says in the paper it submitted to us that in principle, they agree with this amendment exercise, however, the reform should by no means give people the impression that there is anything wrong with the present mode of governance adopted by the SFC, nor should it be a reflection on areas which have been working well, have transparency and are well respected by the market. I believe that the Secretary will also agree with these points.

Deputy President, on the 8th of this month, I attended a forum organized by the Hong Kong Institute of Certified Public Accountants concerning corporate governance in public organizations. It was pointed out at the forum what corporate governance was about and the Secretary would be very interested in this. Although he was not present that evening, the Director of Audit and many of his colleagues were. At the forum, apart from highlighting what corporate governance was about, the annual reports of four organizations were also chosen for comment.

The first of the reports was that of the Housing Society. Members must read it because it will really make you laugh till you double up. The others were those of the Hong Kong Chinese Orchestra, the Kowloon-Canton Railway Corporation (KCRC) and the SFC. Deputy President, on that occasion, they sung high praises of the SFC and put many pages from its annual report on display. A lot of information is provided in the report and there is high transparency. It really is impressive. There is a lot of information and even the attendance rates for many committees, including the Board and various other committees, are set out — Deputy President, perhaps our future annual reports should also present such information, however, this may give the Secretariat a lot of work because we have many types of meetings. Apart from attendance rates,

the performance pledges, the amount of money spent and comparisons with similar regulatory bodies overseas are also presented. That evening, the SFC was highly praised for doing all these, however, there was little mention of whether the relevant post should be split to facilitate operation.

Deputy President, of course, the Secretary would say that this does not matter because every organization in Hong Kong will be required to do so. Just now, it was also said that the Mandatory Provident Fund Schemes Authority, the Stock Exchange of Hong Kong, the Airport Authority and even the KCRC would be required to do so — however, with regard to the KCRC, very careful consideration is necessary. After two posts were created, even though it did not lead to actual fighting, it led to many problems. Hopefully, the same thing will not happen there in the SFC in the future.

The authorities also said that in the financial services sector, "As the market regulator, the SFC should set exemplary standard for others to follow.". I fully agree with this point, however, we also have to look at what is happening in other regulatory bodies in the financial services sector. What I mean is whether the Hong Kong Monetary Authority (HKMA), which you, Deputy President, and I are both very concerned about, and another body called the Office of the Commissioner of Insurance (OCI) have any corporate governance structure. The answer is nil. That evening, the speakers at the forum also said that they had actually wanted to include the HKMA as a subject of their study, however, nothing could be done because there was no information or anything that could be used for discussion. Why? Not to mention the Board, there is only a group called the Advisory Committee in the HKMA. Things are very sketchy in all other areas and the Legislative Council cannot even scrutinize its finances. Is it not imperative for the HKMA and the OCI to do something to strengthen their corporate governance?

I also know that the Secretary has to handle thousands of matters in a day, however, if this is the case, should he not deal with matters requiring the most urgent attention first, instead of singling out the SFC from a host of organizations, with its Board the members being overwhelmingly non-executive? This organization has taken many steps forward and it does not matter that it takes one further step, however, there are some others that have not taken even half a step. However, the Government has not dealt with them. I wonder if Mr Joseph YAM is more intimidating or what. I really think it may be necessary for the authorities to review their priorities. Deputy President, of course, the Secretary

would say that Joseph YAM has nothing to do with him, however, even if he has nothing to do with Joseph YAM, this matter still has something to do with the authorities, has it not? Why is the Government still unwilling to do what is the most urgent and what has been discussed by the Legislative Council for years, but pursues what may not be necessary so persistently and is so bent on doing it? Why? The reason is none other than Mr Andrew SHENG has left and his post is vacant, so this matter has to proceed. In my view, how can one give a satisfactory explanation for this?

When a financial regulator in Hong Kong requiring attention is left alone, Deputy President, someone is even saying that overseas practices should be followed and that such practices are most desirable. Some Honourable colleagues have queried if there are really that many examples. The Financial Services Authority (FSA) in the United Kingdom is huge and was established in 2003. The organization called Financial Supervisory Authority in Sweden was also established as recently as 2003. Deputy President, in fact, it is not our desire to play catch-up or even overtake Western countries, however, often, when we say that we want to draw on overseas experience, that means we want to wait until other people have done a good job and things have been proven to work before we proceed. At present, this measure is not implemented in any country in the world, yet we are rushing to do so. As regards other countries, since this measure has been implemented only for such a short time, will they definitely be successful? In view of this, I am really concerned and have some reservations.

As regards the post of the Chairman, we noticed and the Board of the SFC also told us that most members queried if the post of the Chairman could be part-time in nature. In fact, be it the SFC or the sector, they all told us they hoped a competent and experienced person would take up the post and the authorities should put in place an independent and objective mechanism to select the Chairman — that is, if the Bill is passed — and they do not want the Chief Executive to make the selection according to his personal preference or based on factors such as political affinity. Therefore, this situation has indeed aroused the concern of all people.

I noticed that some time ago, it was said that the candidate would be Mr Charles LEE but he has said that since he was ill, he would not assume the post of the Chairman. There were also news that it would be Mr Marvin CHEUNG, but he also said that he would not take up the post. However, it was again

reported in the newspaper yesterday that Mr Marvin CHEUNG had not said that he would not take up the post, so perhaps an agreement has now been reached and an announcement will perhaps be made after the passage of the motion. Of course, that will be picking someone with close affinity for the job. However, I believe the person who takes up the post must be someone credible, since no matter if you like Mr Andrew SHENG or not, in the past several years, we all think that the SFC has been credible. Therefore, if any *faux pas* is made and the credibility of the SFC is compromised, no one in the authorities can possibly make amends for it.

Deputy President, the industry has held many meetings with us, and what is their hope? Their hope is that if this Chairman is indeed appointed — in fact, the authorities have not said whether the post would be part-time in nature, since they said that it was not at all meaningful because regardless of whether it was a part-time job or not, the appointee would have to work at any time when necessary. Although the annual salary amounts to only \$700,000, the Chairman has to go to work at any time. The authorities also said that we should not talk about money all the time, that it was a service, just as being a Member of the Legislative Council is a social service (that means the Secretaries did not come here to provide a service because their annual remuneration amount to \$3 million to \$4 million, so they should talk about money). They are saying that regarding the post of the Chairman, one should not talk about money, yet he has to go to work at any time.

The industry expressed the hope that the post should offer remuneration at a competitive level and should be full-time in nature, furthermore, the Chairman should command the support of the sector with his professionalism and expertise. They believe that these criteria should be adopted in selecting the Chairman. Therefore, they all considered that the annual salary of \$700,000 or \$702,000 was inadequate. If this amount of salary is really offered to recruit someone in the financial sector, since he has to spend a lot of time on performing the duties required of this post and has to put other matters aside, it is most unlikely that such a person can be found.

Deputy President, how many people like this can one find? Only a small number of them. Deputy President, what sort of people will they be? They will be the descendants of prestigious families, dandies or people who have made enough money and found that they cannot play ball games seven days a week. What did the sector say to us in the Bills Committee? They said that if that was

the case, these people would not do the job for financial reasons but for political reasons. They all voiced their opposition to appointing the Chairman of the SFC based on political considerations. I hope the authorities will listen clearly to these views and I also fully support them.

Mr SIN Chung-kai also mentioned that several months ago, the CEO of the FSA of the United Kingdom had come to Hong Kong — I do not know why things turned out to be so coincidental. Just as we were examining this Bill, he came purposely to meet us in the Legislative Council. Deputy President, you know that I am hard-working, so I decided that I had to meet him.

We had a discussion with him and talked about his work as the Chairman. He told us one thing very clearly, that is, their division of work is actually very clear-cut. The Chairman has a lot of work to do, the more so because there are many things under his management. However, he said one very important point was that the Chairman select, no matter if it was a part-time post or otherwise, will not be a political appointment but an ordinary employment. In addition, the difference in the salaries of the two persons was only some 10% to 20%. When it comes to the incumbent Chairman and the future CEO of the SFC, one of them will receive an annual salary of some \$6 million to \$7 million but the annual salary of the other person will be \$700,000. Deputy President, what does this tell us?

In view of this, we have told the Secretary many times that the salary must be adjusted, so that the assistant non-executive Chairman, or whatever the name is, can concentrate on the duties of this position and this person has to be a professional. It cannot be someone whose father is very rich or someone who has made billions of dollars and does not have to work. We do not want this sort of people to supervise the SFC. I hope the Secretary will understand that all of us think that the credibility of the SFC has not come easily, so we do not want to see this credibility destroyed by any political appointment in the future.

Deputy President, finally, one very important point which Ms Margaret NG has also raised has to do with section 11. It will no longer do for the legislation to empower the Chief Executive to give written directions nowadays. We like to draw on overseas experience, however, such an arrangement cannot be found anywhere, including the United Kingdom, which the authorities like to talk about. Such an arrangement cannot be found anywhere. We asked the authorities why should they want to do this, and they responded that this was not

the way to look at this matter and Hong Kong was really unique. Perhaps Hong Kong is really so unique that something so serious that neither the SFC nor the Secretary would know how to handle will happen and one has to leave it to the Chief Executive to give directions in writing. However, what is the price? The price is interference.

Therefore, be it the sector or the Bills Committee, they both believe that this provision may become a tool for political interference. However, the authorities said that there was no cause for concern because it had never been invoked and there was little likelihood of it being invoked. I then asked what was the point of including this provision in the legislation, since it had never been invoked and there was little likelihood of it being invoked. It will only be an eyesore to put it there. However, the authorities disagreed. Therefore, I think that this is problematic. In that case, what about settling for the second best option? Since the authorities are unwilling to delete this provision, we had better amend the legislation to specify that if it has been invoked, then an announcement has to be made, that is, to make an announcement at an appropriate time. However, the authorities again disagreed, saying that there is no need whatsoever to do so because the legislation does not prohibit making any announcement, so if it pleases him, he can make an announcement, otherwise, he does not have to. In that event, in view of such an arrangement, where is transparency?

Deputy President, another point that we also wish to add to the legislation is to require the authorities to follow the examples of the legislation relating to the KCRC and the Urban Renewal Authority and specify that when the panels or subcommittees of the Legislative Council invite the Chairman or the CEO to their meetings, they have to accept the invitation of the Legislative Council and attend such meetings. However, Deputy President, the authorities were not even willing to include such a provision. As a result, I felt that there was not any major change, nor were there any minor changes. After splitting the post into two, there is no telling if the duties of the two will be clearly delineated either. Fortunately, after we had demanded this for many months, this provision was finally set down.

I really hope that the line can be drawn very clearly, however, who will be identified to assume the chairmanship in the future? Will the candidate really be a convincing choice? Or will the name cause an uproar in the city as soon as it is announced? I hope the authorities will think very carefully because the

credibility and effective operation of the SFC are very important to Hong Kong and it is no joking matter. We hope that the authorities will proceed very carefully. The sector is also paying close attention and some people found it necessary to ask if this move should be taken and taken so quickly. I think there are queries about some matters and a lot of questions have not been answered. Therefore, I oppose the Second Reading of the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, first of all, I must point out that I do not know much about financial investment matters, and I have never made such investments in my life. But since these matters are brought to the Legislative Council for discussion, I certainly have to say something for the simplest reason: Justice.

We all know that the World Cup Finals are going on in full swing and we can watch these matches every day. I watched the match last night. It was great. The result was 1:0, but the match was fair and just. The Chief Executive always says that the ball is round, adding that this is a remark made by NG Fong-wing. This is actually not true, and it proves that he always talks nonsense. This remark was, in fact, made by a famous football player in Germany after West Germany won the championship in the year. He is the one who said that the ball is round, because West Germany was not expected to win but it won in the end. That said, fair play must prevail, come what may.

But what is the Chief Executive now? Apart from reading out scripts written by spin doctors, he has not done anything for it. Why has he not done anything for it? If we draw an analogy between politics and a football match, he is like the owner of Juventus of Italy, for he seeks to intervene in each football match as to who the referee is and arrange for all the matches in the entire season. Our Chief Executive is lucky because unlike the owner of Juventus, he has not been sent to jail, and unlike the Manager of the Italian national football team, he does not end up with his reputation and credibility ruined. There is no reason for his reputation and credibility to be ruined. He is still in this Chamber, and as the rules of election are extremely unfair, he has still obtained majority support and described people opposing him as the opposition camp.

I know nothing about the contents of this Bill. But I heard Ms Emily LAU ask why we still have to keep these things. I found this very strange, and

it is actually ironic. We all know that there used to be a post called the Governor. The Governor obviously had absolute executive powers, because Britain won the war in 1842 and won another victory in 1860. Hong Kong was a colony, and Britain would send someone here to rule this place. So, the Governor certainly had absolute powers; if he wants you to live, you live; if he wants you to die, you die. However, we are now reunited with our Motherland, and we say that it is now "Hong Kong people ruling Hong Kong". We would feel an upsurge of passion in our heart whenever the national anthem is played and we are now masters of our own house. Why should we retain this prerogative of the Governor which had, for many times, aroused criticisms from us and even from everyone else? The prerogative of the Chief Executive is just like this.

This prerogative of the Chief Executive will enable him to give written directions as if fearing that the person who received the written direction would, like many officials, shirk his responsibilities and renege on verbal undertakings. So, he has to give a direction in writing to prove that he had instructed the person to do something, in which case the person would not even have the chance of misunderstanding him. This written direction, in fact, very clearly confers a power on the Chief Executive to take on an executive-led role as mentioned by Secretary Stephen LAM. The power conferred by this executive-led role has led to interferences in all matters.

The President, Mrs Rita FAN, said earlier that what I had said was irrelevant, but I think it was relevant. In most of the issues now, there are people calling a stag a horse and distorting facts. This is why I asked Secretary Stephen LAM whether he knows Joseph GOEBBELS, LI Peng, YUAN Mu, and so on. They are birds of the same feather who denied killing anyone when they did kill someone. GOEBBELS said that a lie told a thousand times will become the truth. This is why I asked the Secretary whether he knows these people and whether, when he comes to this Chamber, he will hold these people in high repute for what they had done, and that can explain why his overall performance is like that.

In fact, it is a very difficult task given to our officials when they have to defend injustices. Ms Emily LAU has made a good point. Let us look at the several sons of wealthy families in the ruling team of the SAR Government. One is the eldest son of a rich family whose mother sometimes comes forth to interfere a bit, telling her son what he should do and reminding him that he must

know when to press forward or step back. Our system is just like this. Given the imminent staff changes in the SFC, the Chief Executive took the opportunity to propose the creation of a non-professional post, but the office bearer will work full-time; he will be on the Government's beck and call, and where necessary, when the Chief Executive gives orders to him by way of a written or non-written direction, he must do as told.

This system is not borrowed from the British, but from our Motherland, and it is the Political Bureau Member system. On top of the Governor there is still a Member of the Political Bureau. I had, in Guangzhou, experienced the style of work of a Member of the Political Bureau, Mr ZHANG Dejiang. He was courteous indeed. Even before I started to speak, he already said mockingly that he had listened to what I had said for many times and so, it was unnecessary for me to say anything further. That HUANG Huahua did not dare to utter a word. He only said that he was not at the same level as Secretary ZHANG and so, he would rather report on the practical situation. He really knows how to scold people in a roundabout way. He was actually saying that ZHANG Dejiang was talking nonsense.

This is what we are doing now. The SFC itself already has someone with credibility doing the work, but he proposed that an additional post be created, and this is tantamount to a Member of the Political Bureau. This Member of the Political Bureau has to establish ties with all sides and, appointed by the Chief Executive, he must listen to all his directions. Secretary Frederick MA, what will you do then? If the Chief Executive puts a Member of the Political Bureau on top of you to make defence for you or stand behind you pointing a gun at you and hitting you with a hammer, what feelings would you have? To put it plainly, the system now is just like this, and the objective is to create such a post.

Some people said that many people do not yield to pressure for money and that many are not remunerated for they have done. Insofar as this logic is concerned, I must raise it for some discussion here. After the reunification, many sons of wealthy families said, "I have come forth to serve the people not for money. Why do you not thank me for that?" "Ah Chung" said, "I could have earned that huge amount of money and I chose not to but to serve you. Why do you not thank me for that?" Why should I thank him? The reason is that his public powers can affect many people. Our society, especially the media — I can see that they are here — is always disseminating the message of

worshipping the rich. We have met many sons of wealthy families. Mr TUNG is one of them, and he had served Hong Kong for almost eight years. Can we say that let us not criticize him anymore for it is very kind of him to choose to serve us since he, being the son of a wealthy family, could have chosen to manage a large company? We cannot say this.

Therefore, in my view, insofar as this issue is concerned, the Government is actually like a eunuch who is overly anxious about the emperor's business. Nobody has asked the Government to do it, but it said, "Kill it when it is sick". That is, since someone is leaving his post soon, the opportunity is seized to create an additional post, and this is how to "kill it when it is sick". The industry has not asked the Government to do this. On the contrary, Mr Martin LEE had proposed to follow the practices of the SFC because property developers are messing things up, and if the acts of property developers are monitored by a similar property development commission, property developers might have been arrested and even put to jail.

Strangely enough, this Council considers it unnecessary to monitor property developers. I do not know what the Government is doing. Nor do I know what those people who have been supporting all executive decisions of the Government day and night are doing. On the other hand, there is also public opinion. The public considers that the acts of property developers are outrageous and therefore, their regulation is warranted, but the Government simply neglects this and like Ronaldiho's "no-look pass", it just passes on the ball even without looking at it. What is this Council doing here? This Council is just allowing somebody as stupid as me to talk day and night about things which everybody can see as unreasonable.

I am very stupid. I only know one thing. If I see that the emperor does not have any clothes on him, I will tell him that he is naked and that he looks terrible. I was scolded by other people before. They said that this "Long Hair" knows nothing and is talking nonsense. But have these people given any answers on issues which are common-sense issues to ordinary Hong Kong people? They cannot give any. Do they not feel ashamed? Let me repeat this: Last week Mr Martin LEE moved a motion for debate, a motion without the constitutional status and power to command actions by the Government. He raised this issue for discussion but was given a lot of stick. What kind of a world is this?

So, when the Chief Executive is taking this opportunity to allow intervention by another person in an area in which members of the industry have already made a lot of efforts and well-established practices have already been adopted, we must be very careful. Why have I brought this up for discussion? It is because even though we have talked much about these sons of wealthy families, they are actually "nobody" compared to the "crown prince party" in the Mainland, and are absolutely no match for them. We can see that the leader of our country's "crown prince party", BAO Xilai, who had caused troubles in whatever he did, is now the Minister for Commerce. He is now the Minister for Commerce, and when a member of the "crown prince party" is in power, all his men will come into power too. If a leader of the "Eastern Depot"¹, or a Member of the Political Bureau as I referred to just now, is appointed by Donald TSANG in the SAR, control can be exercised through collaboration between internal and external forces. We heard the "crown princess" (daughter of LI Peng) say that she wanted to sell us electricity and acquire a power company in Hong Kong. We also heard the "crown prince" (son of JIANG Zemin) — I have no idea how he will become rich — say that he wanted to buy a telecommunications company and he approached the son of the LEE's family to make this purchase.

If such a post is created, it means that they can have a mechanism to transfer benefits to each other under the table. All it needs is a written direction from the Chief Executive asking him to do this and he would have to do it accordingly. I am a poor person and so, I do not know their bone of contention. I somehow feel that one of the gangs (I do not agree with either gang) represents capital that does not belong to the "crown prince party" and they wish to obtain benefits from the control. I have spoken on this at great length today because this is in fact too bad insofar as justice is concerned. While these two groups of people are robbers, I still feel that if a group of robbers has acted too badly, especially when their acts have affected the rule of law in Hong Kong and the principle of justice in Hong Kong, I must say it loud and clear and make my voice heard.

Therefore, I feel that the public must understand one thing. As long as we allow the Chief Executive to abuse his powers in whatever thing he does and invariably transfer benefits in private in the name of differential affinity, we would definitely be like the person who lived in a tent as in a very famous story.

¹ Espionage agency under the leadership of the eunuchs in Ming Dynasty.

This person was kicked by a camel once and he took no notice of it. Then the camel kicked him again and he still took no notice of it, and finally, when the camel came into his tent, it kicked the man out of his tent. We are here today, and whether we are talking about constitutional reform or social reform or even these arguments in a small circle which seem unrelated to me now, I always see that justice cannot be done, and we hear the Chief Executive say every time that the ball is round. In fact, he is like the owner of Juventus who wants to hand-pick the referee, and it is only after the results have all been fixed that the proposal is submitted to us here.

Members, absolute power corrupts, and this can never be wrong. Today, we can see here that absolute power corrupts to the extent that it is not even tolerable by their own circle. This is what makes it saddening. I hope that colleagues will oppose this. I hope that colleagues can make Hong Kong people understand that the Chief Executive's theories of affinity and transferring benefits are entirely a reflection that corruption stems from dictatorship and that corruption is resulted because there is no universal suffrage. Thank you, Deputy President.

MR CHIM PUI -CHUNG (in Cantonese): Deputy President, I speak in support of this Bill.

Today, what exactly are we discussing here? It is the Securities and Futures Commission (SFC). The development of the SFC can be divided into two stages since its establishment. In the latter stage, the office of the Chairman had been taken by Mr Anthony NEOH and Mr Andrew SHENG, and the incumbent is Mr Martin WHEATLEY. Our discussion today is about splitting the post of SFC Chairman, that is, the so-called Executive Chairman who has all the powers in his hands now, into two posts, namely, the non-executive Chairman and the Chief Executive Officer (CEO).

The Government's stance on this matter is this: It considers that the non-executive Chairman is created having regard to the case of the Kowloon-Canton Railway Corporation, the MTR Corporation Limited and the Hong Kong Exchanges and Clearing Limited (HKEx), and that its creation is to meet the needs of the time. Certainly, some colleagues took exception to this view. But in any case, I come from the financial services industry; I was

returned by the relevant functional constituency, and my constituents do not have strong opposition to this post in principle. Nor have they expressed strong supportive or dissenting view on this. Moreover, the small investors and small shareholders whom I represent actually have no opposition to this post either. That said, I understand that the Government's view on this non-executive Chairman is this: He shall be the leader of the SFC and be given full powers to supervise the CEO; he is not responsible for the daily operation of the SFC and does not have to shoulder many practical responsibilities. But in theory, his powers are still above those of the CEO.

What the industry and small investors are concerned about is not whether a particular post in the SFC will be spilt into two posts. In the past, the composition of the SFC was excessively slanted towards members of the legal profession, comprising of too many lawyers. But that was in the past, as there has been some improvement now. I am not challenging lawyers or suggesting that they lack representativeness. In fact, they are more qualified than ordinary people to sit on the SFC, only that they always tend to go to the extremes. But of course, they still have to be accountable for their representativeness.

Small investors and Chinese-owned brokerages in general very much hope that the SFC will understand and clearly define its responsibilities. Firstly, apart from monitoring the operation of the industry and upholding fair play, the SFC also has three major responsibilities. Secondly, balancing the interests of all sectors, including the interests of large brokerages and those of Chinese-owned brokerages, and it is all the more necessary to take care of the interests of small investors. Thirdly, guidance. It is necessary to give guidance to investors in all sectors, including brokerages and even listed companies. But unfortunately, what we have seen is that the so-called guidance and education provided by the SFC only mean a short television video in which investors are portrayed as dupes or "sheeps" ready to be fleeced. Can this mindset be changed please? In fact, society has become more advanced and still, investors are always regarded as dupes. Even though they are known to be like "sheeps", the Government should do something in order that they will not get killed. The SFC Chairman or the future CEO as well as the 420-odd employees are paid by us to carry out monitoring work, and their duty is precisely to look after this herd of sheeps. The Government should gain a profound understanding of this. Fourthly, it is necessary to make the pie bigger and that is, the scope of business must be expanded.

Now, the Central Government is very concerned about how Hong Kong can become a financial centre, and a collaborative approach has already been worked out. But much to our regret, the SAR Government has transferred the relevant benefits to large foreign companies while complaining frequently that the lack of solidarity in the industry has precluded the formation of a major organization in the industry to compete with these foreign companies. How can it say this? This mentality and attitude are not in line with the actual situation in Hong Kong. Therefore, in any case, whether be it a Chairman, an executive Chairman who have all the powers in his hands as in the past, or a split into a non-executive Chairman and an executive CEO in future, if the purpose is to exercise monitoring between each other, the industry and the public will not oppose this arrangement. We still very much hope that under the Government's supervision, the Government will also pay attention to the delineation of duties between these two posts, and this is what we would like to see.

I personally have some other concerns. I understand that Hong Kong has a separation of powers among the executive, judiciary and the legislature. By the same token, in the stock sector or the financial services industry, insofar as the structure is concerned, the Financial Secretary is on the higher hierarchy of government officials. Let us take him as the Government's Secretary of Department overseeing this industry. The official responsible for governing or supervising this industry is, first of all, the Secretary for Financial Services and the Treasury. Of course, the Secretary always says that the SFC is independent and that it cannot be subject to regulation. Is that so? I do not believe it. Although the SFC is independent administratively, and it is indeed independent insofar as many issues are concerned, in Hong Kong there is not much "factionalism" and after all, there is only one government. Moreover, the second "watchdog" is the SFC which in fact, monitors the operation of the financial markets, especially the operation of stock transactions. This is the responsibility of the SFC. The third is the HKEx. In fact, while the representativeness of the HKEx has changed since its listing in 2000, this "tripartite" structure of powers still prevails.

However, we have seen a rather strange phenomenon recently and that is, the HKEx has created 13 Directors. A few days ago we heard the Financial Secretary proudly announce here that the Government had appointed six members there and that even the Chairman is the Government's man and so, the Government has seven people there. Nobody can control the Board without the consent of the Government or other people even though he had bought many of

the shares. This shows that the Government is actually exposing its own incompetence in saying that it has actually gained control of the HKEx.

We can look at this structure as a three-tiered structure. We can see that in the first tier, there is the Secretary; the second tier is the SFC; and the third is the HKEx. Who are four of those appointed Board Directors? They are Members of the Executive Council. Their duty is to manipulate the overall executive forces in Hong Kong to form a so-called "executive-led" system. Their mindset or thinking is that they are high above the masses, and they even want to be higher than the Legislative Council. Certainly, I take exception to this and I do not agree. Disregarding whether it is the Chief Executive's advisers or employees who form the "executive-led" system, they are, after all, employed and salaried. Yet, their status is very special, for they are Members of the Executive Council. Although they are only on the third tier, do the Secretary and the SFC whether have the guts to impose leadership on them? Should they, as a countermeasure, challenge the Secretary or the SFC or put up opposition in the Executive Council, who would have the power to resist them? Indeed, this is where the conflict lies. Of course, conflicts can be resolved through consultation and co-ordination. But I, being the representative of my industry, must highlight the situation and throw it out.

I call on the HKEx to defend its own interest as a listed company in terms of its responsibilities, because its shareholders are mostly funds which have bought the shares of the HKEx. But they also have the duty to uphold the interests of small investors. If the interests of these people are neglected, when we discuss their responsibilities in the future, the situation would become even more serious than splitting a post into two as we are dealing with now. So, in theory, and as a matter of fact, I will support this Bill today.

As regards Ms Audrey EU's amendment, we can see that the post of the Chairman does not carry no responsibility. Theoretically, he is still responsible to the Board and the SFC, which means that the Chairman is, in fact, very important, just that he is not required to attend to the daily work. Therefore, we should understand that the Chief Executive will not interfere with the operation of the SFC on general issues (he may not have too much professional knowledge in this field). Only when there is, say, a world stock market crash or a sudden incident that he would perform his duties and exercise his powers as the Chief Executive. We saw that during the so-called world stock market

crash in 1987, Mr Ronald LI Fook-shiu telephoned Mr Piers JACOBS (who has passed away), notifying him that he would suspend trading for a few days. In theory, Mr JACOBS was considered to have given his consent if he did not raise objection, but he had later shifted all the blame onto other people. So, in the event of particularly serious incidents in the world financial market or stock market, the Chief Executive can gain more understanding before exercising that power. The new clause 1A and the previous section 11(a) seek to amend the duties of the Chairman (the Chairman used to have all the powers) and now, it is proposed that the CEO shall also be consulted. The amendment of Ms Audrey EU mentioned that both the Chairman and the CEO shall be consulted, which means that two persons have to be consulted. I personally think that it would be better if she can further propose an amendment to revise the word "and" to "or", which means the non-executive Chairman "or" the CEO. Otherwise, I will oppose the amendment if the word "and" is used.

(THE PRESIDENT resumed the Chair)

However, it is unnecessary for colleagues to have too many arguments on this issue, for there will not be too big a conflict. As for the remuneration of the non-executive Chairman, it certainly has a bit of political flavour. Considering their expertise or their worth in the market, some \$700,000 is insufficient, but as it has been said, taking up the post of the non-executive Chairman is a way to serve society and is representative in another sense. In any case, although the remuneration is increased to \$700,000, some people are still not interested in taking up this post. What is the reason? If the Chairman is remunerated only nominally at \$10,000 or below \$100,000, one would feel honoured if they are appointed to the post. But if the Chairman is salaried, it means that he is employed, disregarding how much he is paid. If the Chairman is an employee, then everyone can challenge the person who has taken up this post any time. But since the terms and conditions have all been set out, let us propose amendments to this when necessary. In fact, I think it is unnecessary for Members to engage in major controversies over this issue.

President, today, I speak in my capacity as the representative of an industry with whom I am familiar and also on behalf of some members of the public and small investors. My objective is to tell the community that they should not think that there are great controversies among us and hence wonder

what we are arguing about. In fact, all these only involve the policy of a government department, and this can be likened to a storm in a teacup.

MS AUDREY EU (in Cantonese): President, the Bill under our discussion today actually has a few pages only, with three provisions in three pages only. But if we look up the relevant records, according to the minutes of the House Committee meeting on 8 April 2005, we can see that a Bills Committee was proposed to be set up to scrutinize the Bill then. During this period of a year or so, a total of nine meetings were held, and the scrutiny of the Bill had even been suspended for a long time. Why? As I said earlier on, this Bill only consists of three very simple provisions which, in fact, deal with just one thing and that is, splitting the Chairman post into two posts, namely, the Chairman and the Chief Executive Officer (CEO). Since this is such a simple matter, why was it necessary to hold nine meetings and spend over a year's time with a substantial part of the time used for the Government and the Securities and Futures Commission (SFC) to provide us with more information? It is because this is, in fact, a controversial issue. Mr CHIM Pui-chung said earlier that it is a storm in a teacup. That is not true.

Why? It is because this involves the key to Hong Kong's position as a financial centre, and to the financial and economic systems of Hong Kong, the SFC is very important indeed. Insofar as this issue is concerned, the then Chairman of the SFC, Mr Andrew SHENG, and many Board members had, for many times, attended the meetings of the Bills Committee. The majority of Board members are, in fact, very worried. They told us that the SFC had all along been operating well with a high degree of transparency. Ms Emily LAU also mentioned in her speech earlier that when she attended seminars, some experts had highly commended the operation of the SFC. As a common saying goes, "if it ain't broke, don't fix it". Since the SFC has been doing so well, why should changes be made to it and why should there be this split?

According to the Government, the purpose is to follow the practice in foreign countries. Britain and Sweden implemented a similar measure in 2003 and so, we have to follow suit. But as you may know, President, we always face a problem and that is, the Legislative Council often sees the Government copying others but invariably failing to copy the whole version, and the outcome is always neither fish nor fowl. Although it is said to be a replica of the British practice, what we have seen is that in fact, the Government's proposal now is not

entirely the same as theirs. After the establishment of the Bills Committee, the former SFC Chairman, Mr Andrew SHENG, had attended our meetings many times and expressed many concerns.

Besides, Mr SHENG and the Deputy Chairman of the Technical Committee of International Organization for Securities Commissions, Mr Michel PRADA, had drawn our attention to two core issues, which are also of concern to the Bills Committee and the Civic Party. First, the delineation of responsibilities between the non-executive Chairman and the CEO; second, if the Chairmanship will be made a part-time post in the future, that is, not a full-time post but a part-time post, it would cause many problems in the operation of the SFC.

Let us start with the delineation of responsibilities. The Government has all along been reluctant to tell us exactly how their responsibilities will be divided. Therefore, the Bills Committee had asked the Government to specify their responsibilities. In the end, after a protracted argument, the Government explained to us in writing how the split or delineation of responsibilities would be implemented. However, the Government is unwilling to write this into the Bill, adding that the details would be set out in the certificate of appointment given to the SFC Chairman and in the employment contract of the CEO. As you may recall, President, not long ago there was the "KCRC incident" which involved disputes between the Chairman and the senior management, and a major cause of it is unclear delineation of responsibilities. Unclear delineation of responsibilities between the Chairman and the CEO will indeed give cause for grave concern. This has happened in the Kowloon-Canton Railway Corporation, let alone the SFC! The possible recurrence of similar disputes in the future is very worrying. So, this is one of the reasons why we oppose this Bill.

President, a more important reason is the issue of part-time Chairmanship. Hong Kong is an international financial centre. The complexity of its market is known to all. The former SFC Chairman, Mr Andrew SHENG, told us when he attended meetings in the Legislative Council that from his six years' of experience working as the Chairman, he considered that it would be extremely difficult for a Chairman not working on a full-time basis to accomplish his tasks. Most members of the SFC Board also raised this point in the Legislative Council, questioning whether it is possible to make the Chairmanship a part-time post.

As we all know, the operation of the SFC is always changing and evolving over time. But in spite of this, the Government is still unwilling to change its position. The Bills Committee had time and again asked the Government to tell us the remuneration for the Chairman working on a part-time basis. The Government was reluctant to tell us at the outset but after we had pursued this for a long time, the Government then told us that the remuneration would be around \$700,000 per annum. This level of remuneration, as Ms Emily LAU also said earlier, could only employ someone coming from a wealthy family to take up the post.

President, I do not mean that nobody would work not for money, as many people are prepared to serve the community and to serve public interest. Money is not a very important issue. This is true with many people. However, when we scrutinized the Bill, our objective is not to create a post tailor-made for a particular person or a particular kind of persons. Rather, we hope to establish a mechanism, and this mechanism would be reasonable and well-justified in its operation.

As Ms Emily LAU pointed out in her speech earlier, since Hong Kong is copying the British practice, let us look at their remuneration when a split was given effect there. We found that their Chairman and CEO are remunerated at a more or less the same level, which is different from Hong Kong as there is a great difference between the remuneration for the part-time Chairman and that for the CEO. Moreover, even if we compare the remuneration for our part-time Chairman with that for the SFC Chairman in Britain, the former is still no match for the latter. After the split, the SFC Chairman in Britain is remunerated at about £300,000, or HK\$4.5 million, per annum. Therefore, there is a huge gap when compared with the annual remuneration of \$700,000 that may be offered in Hong Kong.

President, this is one of the reasons why we are worried. This is not purely of concern to the Civic Party or some Members of the Legislative Council, as this also reflects the view of experienced members of the industry, or people who have served as SFC Board Directors for years. They should know best about the operation of the SFC, and since they have also raised these questions, we think that these concerns are indeed justified. For the reasons that I have stated, President, and in view of the actual situation, the Civic Party cannot support the amendments proposed in this Bill.

Moreover, many Members mentioned in their speeches earlier the amendments relating to section 11. President, the Blue Bill itself actually does not propose any amendment to section 11. But when we had stated the problems with section 11, the Government suddenly realized the need to amend it. If the Chief Executive gives directions to the SFC in the public interest, it means bypassing the Board to give directions to only one Board member, and he would not be required to consult other members of the Board, not even the Chairman, for he would need to consult the CEO only.

However, this would lead to a major problem concerning the delineation of responsibilities between the Chairman and the CEO. According to the explanation given by the Government, the Chairman will be responsible for the policies and directions of the SFC. If that is the case, the Chairman should be in a more senior position than the CEO. The post of the CEO is technical in nature, or functionary as Ms Margaret NG said earlier, responsible for the daily operation. But when the Chief Executive gives a direction, the circumstances would be earthshaking, and as Mr CHIM Pui-chung said, the situation would be affecting the financial system in the whole world, including Hong Kong. If, under such circumstances, it is still unnecessary to state explicitly that the Chairman must be consulted and that only the CEO would need to be consulted, it just does not make sense. As I mentioned earlier, why is it that in copying others we can never copy everything, thus making the outcome neither fish nor fowl?

President, this is why the Civic Party considers it difficult to support this Bill. As regards the details relating to section 11, I will rise to speak again when I move my amendment to this section. Thank you, President.

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

MR ALAN LEONG (in Cantonese): Madam President, the Government has proposed the resumption of the Second Reading debate on the Securities and Futures (Amendment) Bill 2005 (the Bill) in this Council. Earlier on, Ms Audrey EU and Ms Margaret NG of the Civic Party have spoken on their proposed amendments to the Bill. But as you, Madam President, have ruled that Ms Margaret NG cannot move her amendment, the Civic Party can only lobby for Ms Audrey EU's amendment with full vigour. Although the two

amendments have different contents, they have the same objective and that is, to plug a major loophole which would arise from the amended Securities and Futures Ordinance, so as not to jeopardize the independence and credibility of the Securities and Futures Commission (SFC).

Under the existing framework, the full-time SFC Chairman heads the SFC Board as well as the executive arm of the SFC and is held responsible for the governance and day-to-day operation of the SFC. Under section 11 of the existing Securities and Futures Ordinance, the Chief Executive may, after consultation with the SFC Chairman and in public interest, give directions to the SFC, and the SFC must execute these directions. This provision obviously confers on the Chief Executive a very enormous power, and Ms Margaret NG also recalled how she had felt uneasy with this power the other day. She considered this an archaic power originated from the colonial era which does not fit in with the modern accountability system at all. Some Members shared this concern at the time, but as the Government had continuously guaranteed that the Chief Executive would exercise this power only in unforeseen and very special scenarios and where it is in public interest to do so, most of the Members had attached great importance to the Government's undertaking and therefore, considered it acceptable to reserve this power for the Chief Executive.

Madam President, this power being conferred on the executive, which is just "put aside in reserve", is indeed a great power, and this has caused the corresponding check and balance mechanism to become weakened, making it disproportionately weak, and I can even say that it is just better than none. But as pointed out by Ms Margaret NG, as the full-time SFC Chairman is fully responsible for maintaining the functions of the SFC, coupled with such factors as the professional conduct and international reputation arising from this responsibility, the Chairman will have to assume an independent, professional and fair stance before the Chief Executive's directions.

Once the Chairman and the Chief Executive do not see eye to eye over issues of public interest, the Chairman will have the duty to put across a strong message to the public, and may even resort to resignation in order to uphold the professional image and independence of the SFC. No doubt this is the reality that we must accept though unwillingly, and the so-called check and balance is also very frail but this will, after all, give the Chief Executive a chance to listen to opinions from a wider perspective and think twice before giving directions to the SFC direct.

However, Madam President, under the new arrangement of the Bill, the Chairman's role in day-to-day running will be taken out and given to the new CEO and the target of consultation under section 11 would change from the Chairman to the CEO. The resultant effect would be completely different from the original design of section 11. According to the original intent of the design of section 11, the power conferred on the Chief Executive is meant to enable him to give directions to the SFC only in respect of very special issues and issues relating to public interest after consultation with the Chairman. In other words, it should be very rare that this power will be exercised, and the Chief Executive can exercise his power under section 11 only because the issue involved is of great importance.

The new legislation has defined the responsibility of the Chairman as being responsible for the overall policies and agenda of the SFC, while the CEO will monitor the day-to-day running and regulatory work of the SFC. I really find it hard to think of those rare issues which are related to public interest, thus making it impossible for the Chief Executive not to directly give directions to the SFC, but are entirely unrelated to the original policies and agenda the SFC. On the contrary, if we believe that these issues of great importance will affect the policies and priorities of the SFC, then we cannot accept the Chief Executive bypassing the Chairman to give directions to the CEO and hence keeping the Chairman in the dark.

Madam President, the main role of the CEO is to oversee the daily operation of the SFC. If the Chief Executive does not consult the Chairman first to ensure that the SFC's policies and directions are consistent with the Government's directions, will it result in a scenario in which the actual operation of the SFC in future will go against the directions and strategies originally established by the Chairman and the Board? Will these directions, after being enforced by the CEO who is responsible for the day-to-day running of SFC, become established practices in the practical operation of the SFC in future? In that case, will a direction given under the amended section 11 be an expedient arrangement to cope with a rare scenario or a means of the Government to directly make changes to the daily operation of the SFC?

Madam President, these questions certainly require further clarification by the Government. But from the answers given by the Government, they are insufficient to convince me that the new legislation proposed by the Government can fully allay these concerns. As Ms Audrey EU pointed out in her speech, it

is indeed unnecessary to make drastic changes to existing regulations and mechanism that do not have major problems. Furthermore, it seems that the new framework proposed by the Government will give rise to even more problems. When we, in making substantial changes, see disadvantages before seeing advantages, a more desirable approach should be to maintain the *status quo*.

With these remarks, Madam President, I oppose the Second Reading.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I now call upon the Secretary for Financial Services and the Treasury to reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I must express my gratitude to the Chairman of the Bills Committee, Mr SIN Chung-kai, and other Members for their thorough scrutiny of the Bill and the valuable advice they offered in the past one year, as a result of which we have been able to perfect the Bill and put it before the Legislative Council for the resumption of Second Reading today.

Although Hong Kong is just a city with a population of 7 million, our securities market is the eighth largest in the world and the second largest in Asia in terms of market value. Members all know that the Securities and Futures Commission (SFC) has been playing a very vital role in maintaining and consolidating Hong Kong's status as an international financial centre. This point was mentioned by Ms Audrey EU in her speech just now, and the Government is in full agreement. In recent years, securities markets in the whole world, including Hong Kong, have been developing rapidly and continuously, witnessing an ever greater number of increasingly complex derivative tools and new products. The SFC has been performing a very significant role in developing and regulating the securities and futures markets of Hong Kong. However, the Government, the general public and Members all hope that the SFC can continue to make incessant progress on the present basis, so as to increase the competitiveness of Hong Kong's financial markets.

With a view to further upgrading the governance and credibility of the SFC and enhancing its ability of formulating directions and strategies, so that the financial system of Hong Kong can better cope with the challenges posed by the ever developing market and the resultant changes, we submitted the Securities and Futures (Amendment) Bill 2005 to the Legislative Council in April last year, proposing to split the present post of SFC executive Chairman into the posts of non-executive Chairman and Chief Executive Officer (CEO). Under the split model, the SFC's Board of Directors will be led by the non-executive Chairman and the CEO will be responsible for the work of execution. This proposal can enable the SFC Chairman to concentrate on the overall working directions, policies and strategies of the SFC. Besides, the Chairman will also become independent of executive management, thus enhancing internal checks and balances. This proposal is consistent with the best governance practice upheld both locally and internationally. Other financial regulators in Hong Kong, such as the Hong Kong Exchanges and Clearing Limited (HKEx) and the Mandatory Provident Fund Schemes Authority, have already implemented such a split model, and its operation has been proven smooth and effective. Successful experience in this regard is therefore already available in Hong Kong. What is more, many other organizations, such as the Airport Authority, the Kowloon-Canton Railway Corporation and the MTR Corporation Limited have also started to implement this model. Our proposal also draws on the experience of the United Kingdom Financial Services Authority in implementing the split model.

Ms Emily LAU told us that during one seminar organized by the Hong Kong Institute of Certified Public Accountants which she attended, she heard people sing praises of the SFC for its good work. I wish to advise Ms Emily LAU that when the Hong Kong Institute of Certified Public Accounts presented its views to the Legislative Council, it also expressed support for the split model. Also, I note that many Members questioned why there should be a split when all was fine. Life is very difficult for the Government indeed. When we see room for progress, we put forward a proposal, but we are then criticized for doing so for no good reasons. And, there are also all sorts of conspiracy theories. I think it is entirely pointless to make such criticisms. Our only hope is that the SFC can do a better job and the financial markets of Hong Kong can continue to develop. This is the established policy of the Government, one which every member of the public will support. We are only trying to perfect the model. Why do people still want to criticize us? I am truly very puzzled. Anyway, all this does not matter so much. I just want to point out that this split model is

supported by many deputations, whether in the Bills Committee or the Panel on Financial Affairs. As many as 20 deputations expressed their views in the Panel on Financial Affairs, and most of the people expressed their support, with the exception of just one or two persons. I am talking about the minutes of meetings, the minutes of meetings of the Bills Committee which I have read because many Members such as Ms Audrey EU and Ms Emily LAU mentioned the Bills Committee. A total of eight persons submitted their views to the Bills Committee, and only one of them — one "person", I mean — raised objection. The remaining seven persons all expressed support. These seven persons were from some highly reputable organizations. For example, The Law Society of Hong Kong was also in support. The Hong Kong Stockbrokers Association Limited, that is, the sector which Mr CHIM Pui-chung represents, was also with us. All these people should know most clearly what the best governance model should be. I am therefore very puzzled to find that the several lawyers or legal professionals in the Legislative Council are so strongly against the proposal.

The Bill seeks precisely to provide for the implementation of the split model and other related arrangements. Let me now briefly explain the provisions. It amends the Securities and Futures Ordinance:

- (i) so that the Chairman of the SFC is no longer to be regarded as an executive director of the SFC, in other words, he or she shall become a non-executive Chairman as I mentioned just now;
- (ii) to provide that the number of non-executive directors of the SFC shall exceed the number of executive directors of the SFC;
- (iii) so that a non-executive director of the SFC may also be appointed to be the Deputy Chairman of the SFC or be designated to act as Chairman of the SFC;
- (iv) to provide expressly that the Chairman, Deputy Chairman and CEO of the SFC shall have such functions as are assigned to them by the SFC; and
- (v) to provide for related matters.

During the scrutiny of the Bill, the Bills Committee expressed concern about the division of responsibilities and various arrangements after the

implementation of the split model. After listening to the views of Members and conducting detailed studies with the SFC, the Government finally forged a consensus on the division of responsibilities. After the implementation of the split model, the Chairman shall lead the Board of Directors of the SFC, set the overall directions, policies and strategies of the SFC. As for the CEO, he or she shall oversee the day-to-day operation of the SFC. Since the Chairman will not be involved in the day-to-day operation of the SFC, he or she must work closely with the CEO when discharging certain responsibilities and duties. For instance, the Chairman and the CEO must ensure that key issues are discussed by the Board of Directors in a timely manner, and that the Board of Directors has adequate support and is provided with all the necessary information on which to base decisions. They must also lead the communication of SFC policies to its stakeholders. And, at the local and international levels, the Chairman and the CEO shall represent the SFC officially.

As a member of the SFC and like other executive or non-executive directors, the Chairman shall continue to execute and discharge the statutory functions of the SFC, including the non-delegable functions set out in Part 2 of Schedule 2 to the Securities and Futures Ordinance.

The handling of all important policies will follow the existing practice and continue to be referred to the Board of Directors for discussions and approval. The Board of Directors will continue to discharge the non-delegable functions under the Securities and Futures Ordinance and receive the financial reports and monthly financial statements of the SFC. The staff of different divisions will continue to attend the meetings of the Board of Directors whenever necessary, so as to explain policy proposals and give reports on important issues related to operation and regulation.

In regard to the roles of the SFC Chairman and CEO and also the division of their responsibilities as proposed by the Government, the Bills Committee of the Legislative Council has already conducted in-depth discussions. Individual Members once proposed that the respective roles and responsibilities of the SFC Chairman and CEO should be stipulated in the legislation. After thorough consideration in conjunction with the SFC, the Administration has concluded that it is not appropriate to adopt the proposal, because the duties and responsibilities concerned may evolve over time and as a result of the development of the

financial markets. Besides, any division of responsibilities and work stipulated in the legislation will render the future division of work in the SFC unnecessarily inflexible. And, we have not come across any local statutory organizations or overseas securities regulators that have stipulated the respective duties of their chairmen and chief executive officers as well as their division of responsibilities in any legislation. After detailed discussions and studies on the experience of other countries, including the experience of the United Kingdom Financial Services Authority in splitting up the post of chairman, the Bills Committee has accepted the Government's opinion. However, in order to ensure that the Chairman and the CEO can fully understand their respective roles and responsibilities, and also for the purpose of enhancing transparency, such details will be attached to the appointment letter of the Chairman and the employment contract of the CEO and made known to the public on the SFC's website.

In view of the changes that will be brought about by the split model, especially the changes that will occur when the Chairman is no longer regarded as an executive director and after the transfer of the Chairman's executive duties to the CEO, I shall move a number of amendments and new clauses at the Committee stage. The proposed amendments can be classified into two categories. The first category concerns the statutory functions/powers of the Chairman under the Securities and Futures Ordinance. We are of the view that it is necessary to transfer or extend certain functions of the Chairman under the existing legislation to the post of CEO. The proposed amendments in the second category are consequential amendments necessitated by the transfer of statutory functions to the CEO.

During the scrutiny of the Bill, Members expressed concern about the independence of the Chairman and whether there would be any conflict of interests. With a view to ensuring the independence of the Chairman and avoiding any conflict of interests, the provisions of the existing Securities and Futures Ordinance on confidentiality and conflict of interests, as well as the SFC's internal code of conduct, shall continue to apply to the Chairman after the implementation of the split model. At the same time, we will also impose an additional requirement, whereby the SFC Chairman shall not, during his or her tenure of office, serve as a director of any listed company in Hong Kong or engage in any major business transaction involving any listed companies and persons or organizations regulated by the SFC.

We will incorporate all these requirements into the Chairman's terms of appointment. A prospective Chairman must agree to abide by these requirements before the appointment can take effect. We believe that the abovementioned proposals will be able to effectively ensure the independence of the Chairman, avoid conflict of interests and help upgrade the SFC's credibility.

During the scrutiny of the Bill, the Bills Committee also conducted in-depth discussions on the procedure of selecting the Chairman and the determination of his or her remuneration. I wish to take this opportunity to offer a brief explanation. Currently, the SFC Chairman is to be appointed by the Chief Executive under the existing Securities and Futures Ordinance. The appointment of a candidate will be made in accordance with the existing appointment system for advisory and statutory organizations, and the fundamental principle is that appointment must be based solely on the abilities of the candidate. In other words, it is meritocracy. We are of the view that the SFC chairman must possess the following qualities: first, he or she must be conversant with the local situation; second, he or she must be highly experienced in or sufficiently familiar with the local business environment as well as the financial and securities markets; and, third, he or she must have knowledge of or experience in international financial markets.

Therefore, Ms Margaret NG needs not worry. We will not appoint, in her words, an amateur as the SFC Chairman. Whoever the appointee may be, he or she must meet all these requirements, basic requirements.

Moreover, in regard to the remuneration for the future SFC Chairman, we must all recognize, as the most important principle, that the appointment is a community service and not an employment with the SFC. From the case of many other statutory bodies, we can notice that many appointees are actually motivated by a pure spirit of serving the community to accept public posts offering very low or even no remuneration, and they are all doing their very best, devoting huge amounts of time and energy to their jobs. I hope that when it comes to matters like this, Ms Emily LAU can refrain from demeaning these people, from labelling them as "dandies" and from criticizing them for having ulterior motives. I think this is a bit disrespectful to these well-intentioned people. We believe that when a suitable candidate decides whether he should accept the appointment, remuneration will not be a major consideration. Similarly, in the case of Legislative Council Members, they are still willing to

devote so much time to serving Hong Kong despite the very low remuneration. Ms Margaret NG expressed many opinions about section 11 just now, so I would also like to offer a brief explanation here. The Administration maintains that section 11 can help the Government discharge its ultimate duty of maintaining the stability of Hong Kong's financial systems.

Section 11 empowers the Chief Executive to give the SFC written directions when he is satisfied that it is in the public interest to do so. This is actually a reserve power under the existing legislation and can be traced back to the repealed section 11 of the Securities and Futures Commission Ordinance.

Section 11 seeks to ensure the effective operation of the regulatory framework. Under Article 109 and Article 110 of the Basic Law, the Hong Kong Special Administrative Region is required to maintain the status of Hong Kong as an international financial centre, formulate relevant policies and rules and provide regulation in accordance with the law. As Members are aware, the securities market in Hong Kong is currently subject to a three-tier regulatory framework. The HKEx provides regulation at the front line, and the SFC plays the role of a statutory regulator. As for the Government, its job is to ensure that the SFC can do an effective job in regulation and maintain adequate co-ordination with other regulatory bodies. Although the SFC is responsible for the day-to-day regulation of the securities and futures markets, the Government must still bear the ultimate, overall responsibility. And, members of the public also expect the Government to shoulder the ultimate responsibility of maintaining the overall stability of Hong Kong's financial markets. This is in fact a reasonable expectation. The purpose of issuing directions in public interest to the SFC in times of emergencies is to ensure the effective operation of the three-tier regulatory framework.

I wish to reiterate that what section 11 provides for is just a reserve power, and the Government will not exercise this power unless the situation is extremely urgent. This is just a power meant to protect the public interest.

This is a necessary and appropriate arrangement under the constitutional and regulatory frameworks of Hong Kong. And, as I have pointed out, it can help the Government discharge its responsibility.

Madam President, finally, I wish to point out that open discussions have been going on for one and a half years since the splitting proposal was put

forward in late 2004. And, the Bills Committee has also spent a year or so on its detailed scrutiny. The proposal is supported by the SFC and an overwhelming majority of the relevant industries and professionals. At this meeting today, some Members have described the Chairman post of the SFC as tailor-made, hinting that we are trying to create a post with a particular candidate in mind. But I wish to tell Members that up to this moment, the Government has not announced any candidate for this post. In other words, references to "tailor-made" and any conspiracy theory cannot possibly be substantiated. The SFC Chairman will be independent of executive management, and this will enhance the internal checks and balances of the SFC. We hope that under the leadership of a non-executive chairman, the Board of Directors can play a larger role in monitoring executive management.

Although some Members have raised objection, I still hope that Members can support the Bill and the various Committee stage amendments I am going to move.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Securities and Futures (Amendment) Bill 2005 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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.

Mr James TIEN, Mr Albert HO, Mr Fred LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Ms Margaret NG, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 48 Members present, 39 were in favour of the motion and eight against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Securities and Futures (Amendment) Bill 2005.

Council went into Committee.

Committee Stage

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

SECURITIES AND FUTURES (AMENDMENT) BILL 2005

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Securities and Futures (Amendment) Bill 2005.

CLERK (in Cantonese): Clause 1.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 and 3.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that clauses 2 and 3 of the Securities and Futures (Amendment) Bill 2005 (the Bill) be amended as set out in the paper circularized to Members.

The amendment to clause 2 concerns the definitions of "executive director", "member" and "non-executive director". We need to introduce this amendment in order to specify that during any period when an executive director or non-executive director acts as Chairman, his capacity as the acting Chairman will not result in the loss of his original capacity as a member of the Securities and Futures Commission (SFC).

As for the amendment I have moved to clause 3, it seeks mainly to transfer or extend certain statutory functions performed by the Chairman under the existing legislation to the post of Chief Executive Officer (CEO) and also to introduce consequential amendments necessitated by the conferral of statutory functions on the CEO. For instance, consequent upon this, there is a need for us to stipulate that the CEO is part of the composition of the SFC.

Since the CEO shall be vested with statutory functions, it is appropriate from the legal perspective for the legislation to provide for the acting arrangements to be made when the post of CEO becomes vacant. I therefore propose to add a new section 9B to Part 1 of Schedule 2, specifying that "the Chief Executive may designate an executive director of the Commission to act as chief executive officer of the Commission for any period during which the chief executive officer of the Commission is unable to act as chief executive officer due to illness, absence from Hong Kong or any other cause, and may at any time revoke any such designation."

Besides, I also propose to amend section 14 in Part 1 of Schedule 2, specifying that apart from the Chairman, Deputy Chairman or any two other members, the CEO may also convene meetings of the Board of Directors.

Regarding the forming of a quorum for the Board meetings of the SFC, we now propose, after considering the Bills Committee's view, to amend the Bill by adding a new section 16A to Part 1 in Schedule 2 of the Securities and Futures Ordinance, specifying that for the purpose of forming a quorum under section 16, the Chairman shall be counted as a non-executive director. Besides, an executive director or non-executive director who acts as the Chairman shall be counted only once for the purpose of forming a quorum under section 16.

I also propose to amend section 27 in Part 1, Schedule 2 of the SFC, specifying that apart from the Chairman and two other executive directors, the CEO shall also be a member of the Advisory Committee. In addition, I further propose to also empower the CEO to convene meetings of the Advisory Committee.

The two amendments mentioned above have been discussed by the Bills Committee and received its support. I implore Members to support the amendments proposed by the Administration.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex II)

Clause 3 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 and 3 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 1A Directions to Commission.

CHAIRMAN (in Cantonese): Both the Secretary for Financial Services and the Treasury and Ms Audrey EU have separately given notice to move to add new clause 1A to the Bill.

The Secretary proposes to amend section 11(1) of the Securities and Futures Ordinance to provide that the Chief Executive must consult the CEO of the Securities and Futures Commission before giving directions to it. Ms Audrey EU proposes that the Chief Executive must consult the Chairman and the CEO of the Securities and Futures Commission.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Financial Services and the Treasury to move the Second Reading of his new clause 1A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that my new clause 1A be read the Second time, so that section 11(1) of the principal Ordinance can be amended to provide that before giving any written directions to the Securities and Futures Commission (SFC), the Chief Executive must consult the CEO of the SFC (instead of the Chairman of the SFC as stipulated in the existing legislation). The amendment has been set out in the paper circularized to Members.

Since there will be changes to the functions and responsibilities of the SFC Chairman under the split model, we are of the view that the statutory functions vested with the Chairman under section 11 must be transferred to the CEO, so as to ensure their proper execution.

In regard to the new clause 1A to be moved by Ms Audrey EU, which provides that before giving any written directions to the SFC, the Chief Executive must consult the Chairman and CEO of the SFC, the Administration would like to respond as follows.

A number of discussions on the consultation arrangements to be adopted by the Chief Executive before exercising this reserve power were held by the Administration at the meetings of the Bills Committee. After thorough consideration, the Administration and the SFC are both convinced that the authorities' proposal, that is, the proposal on consulting the CEO (instead of the Chairman) is more desirable and practicable for the following reasons:

1. Since the establishment of the SFC in 1989, section 11(1) has never been invoked. Under this section, the Government is vested with the reserve power concerned as a last resort, so that in case of emergencies and extreme scenarios, it can put in place necessary measures. Such scenarios may arise when the stability of Hong Kong's financial systems and its reputation as an international financial centre come under sudden and unexpected threats. If the Chief Executive is required to consult both the Chairman and CEO of the SFC before giving written directions to the SFC, the flexibility of the Chief Executive in giving timely directions to the SFC in times of emergencies will be unnecessarily restricted.
2. Being the person in charge of the executive management of the SFC, the CEO is responsible for overseeing the day-to-day operation of the organization. He is therefore the person who is most familiar with the detailed and routine operation of the SFC. For this reason, the SFC is of the view that the CEO is the most suitable person to give responses to or advice on the feasibility or otherwise of the Chief Executive's written directions, especially in times of emergencies.

For the above reasons, we propose to amend section 11(1), stipulating that the Chief Executive must consult the CEO before giving written directions to the SFC. After considering the views of individual Members, we will make it a requirement in the duty list of the CEO that it is the duty of the CEO to consult the Chairman and other members before providing advice to the Chief Executive.

The Administration wishes to emphasize that the giving of written directions to the SFC is a reserve power that will not be exercised lightly. And, such a power can only be exercised when the following statutory requirements under section 11 are met:

1. The giving of written directions must be in the public interest; and
2. the giving of written directions must be for the furtherance of any of the SFC's regulatory objectives or the performance of any of its functions under the Securities and Futures Ordinance.

I implore Members to support the Administration's amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the Secretary for Financial Services and the Treasury's new clause 1A be read the Second time.

CHAIRMAN (in Cantonese): I will call upon Ms Audrey EU to speak on the motion moved by the Secretary for Financial Services and the Treasury as well as her proposed new clause 1A. I will only ask her to move the Second Reading of her new clause 1A if the Secretary for Financial Services and the Treasury's motion is negated. If the Secretary for Financial Services and the Treasury's motion is agreed, Ms Audrey EU may not move the Second Reading of her new clause 1A.

MS AUDREY EU (in Cantonese): Chairman, my amendment is related to section 11(1) of the Securities and Futures Ordinance. Section 11(1) reads, "After consultation with the Chairman of the Commission, the Chief Executive may, upon being satisfied that it is in the public interest to do so, give the Commission written directions as to the furtherance of any of its regulatory objectives or the performance of any of its functions." In other words, the existing Ordinance stipulates that, when a major incident has occurred, the Chief Executive may, through the exercise of the so-called reserve power as described by the Secretary, instruct the SFC Chairman to take certain actions if it is in the public interest to do so.

Since the Bill has split the post of the Chairman into two: In addition to the post of the Chairman, the new post of a CEO is created, it should be logical for the Chief Executive to notify both persons (both the Chairman and the CEO) if he has to give directions. Even if only one person should be notified, then according to the existing Ordinance, only the Chairman should be notified. But this is not the case now. Now it is proposed that only the CEO should be notified. Chairman, this issue does in fact bear some relevance to our earlier discussion on the spirit of the entire Bill. It is because one of the points mentioned is, we think that even if the Government is copying or learning from others, it should copy the examples of others in entirety, instead of making a half-baked attempt to produce something which is neither fish nor fowl. If the Government says that it is following the practices of Britain and Sweden in splitting up the post into two, then the Chairman post should be made a full-time one, instead of a part-time one.

In his speech, the Secretary has always conveyed only half of his messages. He asked us whether we had noticed how many members supported the splitting of this post when we attended the meetings. He has also conveyed only half of his message. Yes, the SFC naturally supports the splitting proposal, but does the Secretary know why they have some objection, or why they find that there are problems? It is all because if the splitting is necessary, then we must recruit a full-time SFC Chairman, instead of appointing a part-time one. With regard to remuneration, the Secretary has similarly conveyed only half the message. The representatives of the Hong Kong Society of Financial Analysts came to the Legislative Council to tell us that the industry thinks that the SFC needs to have a full-time Chairman who is competitively remunerated and professionally competent. In other words, the recruitment for such a post should be launched worldwide, instead of only engaging the service of someone by political appointment, as in the case of the Secretary himself. "Long Hair" says that this is para-Chinese style, and what did he call it? He says it will become a "Politburo Member System", and will lead to such a problem because it will have to consistent.

If the Secretary says that this is just modelled on the practices of overseas countries, then we should officially recruit a Chairman, so that we can have a formal and official SFC Chairman. In the event of a major incident that might astound the world, such that the Chief Executive has to exercise the reserve power in an unprecedented manner to give directions, of course the directions should be given to the Chairman, right? At most, the CEO is also informed as a

matter of courtesy. But this is not the practice proposed by the Government. According to the Secretary, this Chairman is unbelievably capable. Although he only works on a part-time basis with mediocre remuneration, he is very well-versed in the operation of the industry and possesses great enthusiasm for serving the public. Although he does not work full-time, he is most dedicated. As such, why should the Chairman not be consulted as stipulated by law when something astounding happens? I think this theory does not hold water. The Government must act with consistency, and do not change its stances in different situations. And the Government must tell the people that this is not a fake Chairman, nor is he politically appointed. Instead, he is a bogus Chairman. In that case, when something critically important happens, please consult the Chairman. This time, Mr Ronny TONG of our Civil Party asked me to move an amendment. We do not want it to be for formality only. Even it is for formality, we also want it to be conducted in a genuine manner. Therefore, when a consultation has to be conducted, please really consult this full-time, not part-time, Chairman. This is also the reason for my inclusion of the Chairman in our amendment.

Earlier on, the Secretary has explained why the CEO is consulted, but not the Chairman, and he says that it is because this is a more desirable and practicable arrangement when the reserve power is exercised. That is why only the CEO is consulted. However, at the same time, he also mentions that as it involves the financial system, and the stability of the financial system is very important, so the reputation of the SFC or the reputation of Hong Kong's financial system cannot be tarnished. As such, since it is explicitly stated in the duty list of the SFC Chairman that he is responsible for the formulation of overall policies, that he undertakes comprehensive responsibility, that he is responsible for the leadership and is the helmsman, so he should be charged with the responsibility of deciding the major direction of the policies. Why should the Secretary say that in consulting him, the Chief Executive will be subject to unnecessary restrictions and cannot act in a timely manner? This is really baffling. Hong Kong boasts itself as an international financial centre with a highly efficient communication system. So, although the Chairman is only part-time, why should there be any reasons for failing to contact him when something affecting Hong Kong's major financial system or the global economy has happened? How can he not be consulted? Why is it out of the question to consult him? Why would the act of consulting him bring about some complexity or unnecessary restrictions? No matter how you put it, such a theory is simply not tenable. If we tell such a rationale to people outside Hong

Kong, they must find it very ridiculous. When some emergencies take place in Hong Kong, the act of consulting the SFC Chairman is not practicable, prevents actions from being taken in a timely manner and would bring about unnecessary restrictions. How can this rationale be justified? Therefore, Chairman, I cannot accept the first reason put forward by the Secretary.

The second reason advanced by the Secretary is that the CEO is most familiar with the day-to-day operation of the SFC, and this is also his responsibility. Therefore, he is the most suitable person. Chairman, I have no objection to the Chief Executive's act of notifying the CEO under such circumstances, nor do I object to the Chairman's discussion with the CEO when the former is being consulted by the Chief Executive. But this does not mean that the CEO is the most suitable person and that he can even bypass the Chairman. The Secretary says that this is not the case. He would not bypass the Chairman because he will specify in the CEO's contract that he will be required to notify the Chairman in due course. Chairman, if so, why should the procedure be made so unconventional, so unofficial and so covert? What we are discussing now is legislation, and such issues under discussion have an impact on Hong Kong's financial system and the SFC. So when we come to discuss such issues of major principles, the rules, basis and mechanism must be spelt out most explicitly. Since the Secretary says that the post of the Chairman is not a political appointment, and though he works only part-time, he will still work for the SFC in a dedicated manner. Then we should state clearly in the Ordinance that the Chairman must be consulted, instead of requiring the CEO through his contract to consult the Chairman when he is notified by the Chief Executive. We should not act in such a covert and cumbersome manner. Instead, we should act in a relatively direct, natural and formal manner. Chairman, this is also our reason for proposing the amendment.

In his speech, Mr CHIM Pui-chung said that it is just a minor issue. He suggests making a small amendment to the effect of notifying either the SFC Chairman or the CEO; and he said, with this amendment, he is ready to render his support. However, if both of the two persons have to be consulted, I would find it difficult to support. Chairman, I would like to go into a further discussion with Mr CHIM Pui-chung, of course, through you. As a matter of fact, our amendment is more reasonable than the one moved by the Secretary. If only one person can be chosen for consultation, actually it should be the Chairman. But since the Government says that the CEO should be notified, we also do not object to the inclusion of the CEO. It is as simple as that. In fact,

the best approach is to consult as many members of the Board as possible. However, if there are really problems, such as involving a major incident as the Secretary said, and the Government has to exercise the reserve power that has not been used before, then, at any rate, it must be the Chairman who should be notified. This is where the rationale lies. Therefore, I hope Mr CHIM Pui-chung can consider this. Although we are in the minority, he may still take this into consideration: Under such circumstances, the person leading the SFC should be consulted, and such a person is none other than the Chairman who enjoys a statutory status in section 11. Besides, since the Government finds it necessary to include the CEO as well, we do not object to the inclusion of the CEO.

Chairman, these are the reasons for our proposing this amendment.

CHAIRMAN (in Cantonese): Members may now debate the motion on the Second Reading of the Secretary for Financial Services and the Treasury's new clause 1A as well as the new clause 1A proposed by Ms Audrey EU.

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

MS EMILY LAU (in Cantonese): Chairman, I said in the debate on the resumption of the Second Reading of the Bill that I oppose section 11. I feel that the SAR Government is seriously wrong as under the present circumstances, it still seeks to incorporate the relevant provisions into the Ordinance, so as to allow the Chief Executive to give written directions to the SFC. If such a situation does occur, I believe it will shock the world.

I also hope that, though the Government declines to state it explicitly, if that situation does occur, it should announce it in the earliest possible instant to tell the public what has happened. However, as I do not accept the practice, so I also cannot support Ms Audrey EU's amendment because I feel that the entire thing should not be proceeded with at all. However, if it has to be done, I hope the Secretary can clarify the issue very clearly. Although the Chief Executive is not required by law to discharge such responsibility, he still should tell the public in the earliest instant why he has to do something so astounding and what are the reasons for his move. Besides, I also hope the Government can expeditiously

consider this: Why does Hong Kong need to have such an outdated and unique provision which cannot be found elsewhere in the world? For this reason, I oppose these two amendments.

MS MARGARET NG (in Cantonese): Chairman, of course I must support Ms Audrey EU's amendment. But obviously this is only the second best option to me, which allows us to maintain the *status quo* in the existing legislation and since the post of the Chairman has been split into two, so both posts should be included in section 11. Therefore, I can only say that this is an option for achieving the purpose of maintaining the *status quo*, so as to prevent the worsening of section 11 as a result of the enactment of the Bill, and such aggravation could further weaken the independent operation and status of the SFC.

Chairman, earlier on, the Secretary has in fact responded to the queries raised by me. I am thankful to the Secretary. However, I would like to respond to him briefly. Why should there be the reserve power? The Secretary means to say that in doing so, we can help maintain Hong Kong's monetary stability. I really fail to see how an unexpected power, which can be arbitrarily invoked without any scruple..... Earlier on, in the debate on the resumption of the Second Reading of the Bill, I explicitly read out the entire section 11. With a simple direction from the Chief Executive, all the safeguards provided by the Securities and Futures Ordinance which has been so complicated and intricately structured will go down the drain. He does not only bypass the Board, bypass some people, he even bypasses the law, meaning that his directions can even override the law. As a lawyer and someone who often talks about the rule of law, I really find it hard to accept this. As an individual, he can interpret what public interest is, and his will can override the law; this is something I have difficulties in accepting.

Now the Secretary says that for the sake of maintaining stability, and in times of emergencies, he may not be able to consult both persons at the same time. I really find this very strange. Earlier on, we have been discussing whether this non-executive and part-time Chairman can really give full play to the significance of this post. Both the Secretary and the department (sic) have repeatedly stressed in meetings of the Bills Committee that, despite the mediocre remuneration, such a person will take the job seriously and he will be very

dedicated to his work, and he will work in the office every day and will always be on call. The Secretary has described such a person as working in the office every day with such great dedication; he would be willing to work even if he does not receive any remuneration at all. As such, he must be a person with a strong sense of responsibility. Chairman, to certain people, the sense of responsibility is really more important than money. Since he has such a strong sense of responsibility, why should we be unable to contact him in times of emergencies?

Chairman, with regard to the President of this Council or even the Chairman of the House Committee, very often they are also required to discharge certain duties, including convening emergency meetings of the Legislative Council, and I am afraid it is likely that such situations could really take place. Will we say that the Chief Executive does not consult the President because the President works only part-time and we are only serving the community, so the Secretary General should be consulted instead? The Secretary General is similar to the CEO and also has that kind of duties. Shall we do that? Of course, that would be out of the question. Chairman, at that time, we did discuss that. I can recall that at a meeting of the Committee on Rules of Procedure, I said that, for example, there was a procedure in resuming the debate on the Second Reading of the Bills, which stipulates that the Member proposing the Bill must consult the Chairman of the House Committee. We also asked what we should do if the Chairman of the House Committee had taken an urgent leave. We have some contingency arrangements for that. Therefore, even Members charged with House Committee responsibility could have some prior discussion on the possible arrangements, how would it be possible that, due to practical reasons, the SFC Chairman cannot be contacted in times of great emergencies and that only the CEO can be contacted? In Greek mythology, there is a god with 100 eyes. At any time, he will keep some of his eyes open. Therefore, he will never fall asleep. Do we need such a person to fill the post of CEO? There are really no justifications for that.

In fact, the Bureau has advanced such an argument on many different occasions. I have asked: What kind of emergencies can there be? The SFC is not a stock exchange, so it does not have to suspend trading in the market. The SFC is also not an organization that provides emergency services. It is just a supervisory organization responsible for exercising supervisory functions, introducing policies, undertaking investigations and taking prosecution actions.

What kind of business that can be so urgent as rendering it impossible to consult one more person within 24 hours? We have repeatedly asked the department (sic) to give us an example or a scope of business to illustrate their point, but they have declined. We really feel that such situations do not exist at all.

Besides, Chairman, the Secretary has mentioned why it is necessary to have the reserve power. He says that it is because, according to the Basic Law, the Government has the responsibility of maintaining effective governance, and it has to assume the ultimate responsibility. Chairman, all the governments in the world have such a responsibility, why is it so special for the SAR Government in this regard? All governments have such a responsibility, and it all depends on how such a responsibility is discharged. All the governments in the world do not find it necessary to have such a power before they can discharge their responsibility. In fact, at a meeting in 2000 in which the Securities and Futures Ordinance was enacted, I mentioned that in order to discharge such a responsibility, (1) a sound mechanism must be maintained; (2) a suitable candidate must be identified; (3) it must be accountable at all times; and (4) it must be frequently reviewed, instead of being subject to interference all of a sudden.

Chairman, can you imagine that your confidence in the stability of a normal machine is founded on the sudden intervention of someone when it goes out of order, instead of basing your confidence in its foundation? Therefore, let us imagine that when the Securities and Futures Ordinance and the mechanism are functioning properly, even if the functions of the CEO and the Chairman are separated, first, it is still not necessary for some unexpected power to be exercised; and second, even if such power has to be exercised, the two most important persons can still be comprehensively consulted; and these two persons are actually equivalent to the only post as I have originally mentioned.

Chairman, the Secretary says that I do not have to worry because this Chairman is a professional who is experienced and enjoys a good reputation. Chairman, if such a candidate does exist, I think he will definitely stand out from other candidates even in an open, fair and competitive recruitment exercise. Why should he be considered an internally predetermined choice of candidate to fill the post? Why should he be considered as being very close to the Chief Executive once he assumes the office? Why should he be put into such an unfavourable situation? Why can we not do it this way while the rest of the world can?

Chairman, I would like to respond to the view advanced by Ms Emily LAU. Sometimes, though I think Emily's argument is not as complicated as mine, actually our ways of thinking are very similar. She thinks that she cannot accept the amendment proposed by Ms Audrey EU of the Civic Party because she practically opposes section 11. I am thinking about this: Why can we not consult the Chairman direct, that is, no amendment is required? With regard to the Secretary's amendment, why can we not simply vote it down altogether? Why should a CEO be added? We suddenly realize that the CEO has to be a professional, but for the post of the Chairman, we worry that it might be filled by someone who causes no concern. If you just look for someone close to you to assume the Chairmanship..... Just assume that we are unfairly adopting a suspicious attitude without proper justifications, but naturally we cannot just consider the most optimistic scenarios, and we should also take all kinds of situations into consideration. Under such circumstances, it is still not very safe because once the so-called reserve power is in place, many unstable factors will emerge. Such unstable factors did not exist in the past, but the Government has introduced them into the system. So we must explore ways of tackling them. Therefore, that is why Ms Audrey EU has proposed that the Chief Executive should have a legal responsibility to consult both the CEO and the Chairman. So that is what it is all about.

Chairman, in fact I am not a pessimist. I even feel that my optimism is slightly excessive. We can all see that the Bill has not mentioned that the remuneration of the Chairman is only about \$700,000 per annum, nor has it been mentioned that the Chairman is just a part-time post, or that he will be appointed internally without going through any fair competitive recruitment process. All these are administrative issues or problems that are outside the ambit of the legislation. With some optimism, I am hoping that, even though the Bill was eventually passed, the department (sic) will change its mind some day and think that Margaret NG is correct. Although this Chairman does not enjoy the status of an executive chairman, nor is there any mention that he is the executive chairman, or that he is not, the Government will still launch an worldwide recruitment exercise, so as to give him the status respected by the entire world, and such a candidate should also be familiar with the actual situation in Hong Kong. Once such a person is identified, the remuneration offered to him should adequately reflect the significant status of this person.

Chairman, when such a person has assumed the office of the Chairman, and if we care to review section 11, we shall find how wrong it is to specify that,

instead of consulting this great Chairman, the CEO is the only person to be consulted. Therefore, I think the best option is to repeal section 11. However, as the President has already ruled that this cannot be proposed, so I think that the amendment proposed by Ms Audrey EU does merit our support. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Ms Audrey EU, do you wish to speak again?

(Ms Audrey EU shook her head to indicate that she did not wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I am much privileged to have the opportunity of discussing this topic with the two barristers in the Chamber.

According to Ms Margaret NG, the Chairman is not included in the relevant provision because it may not be possible to locate him or her. We have never said that the Chairman cannot be located. I wish to clarify this point. We only think that it is better to notify the CEO because as the person in charge of management, he will know the operation of the whole organization most clearly. As I have explained, if the CEO deems it necessary, he may also consult the Chairman and other directors. Therefore, it is not quite true to say that all will come to a close after the discussions between the Chief Executive and the CEO. I do not wish to give such an impression.

Just now, Ms Margaret NG talked about a rouge suspecting deceit. I may as well say something from a rouge's perspective. I can imagine that if the Bill today proposes to consult the Chairman instead of the CEO, something quite

different will be said. People may criticize that since the Chairman is appointed by the Chief Executive, they must be very close, so there will be problems if the CEO is not consulted. I therefore very much agree with Mr CHIM Pui-chung that many disputes are basically very minor, but Members nonetheless spend huge amounts of time on them. I think that a full-stop should be put down here and now.

Ms Audrey EU commented just now that this mode of operation was not appropriate. But before submitting the Bill to the legislature for scrutiny, we did in fact approach the incumbent Chairman of the Securities and Futures Commission (SFC) on the proposal to consult the CEO and obtained his support. It is not true to claim that the Government is the only one who thinks that the proposal is justified. Rather, there is already a consensus. I must clarify this point clearly. Ms Audrey EU criticized that I had only presented one side of the truth without disclosing the other side. But she has also acted in a similar fashion. She said that the chairman of the Financial Services Authority (FSA) of the United Kingdom was very wealthy and there were many advantages. But she did not mention that the FSA was authorized by the Parliament to enact laws. Suppose the Hong Kong Legislative Council also authorizes the SFC to enact laws, I believe that we will certainly see it as a major breakthrough in Hong Kong. Therefore, the whole question is not so much about whether or not I have presented only half of the truth. Rather, basically, if people want to argue for the sake of arguing, disputes over many issues may well drag on for a very long time. I also wish to take this opportunity to clarify that such is the situation if a total comparison is to be conducted.

Finally, although Ms Emily LAU is not in the Chamber now, I still wish to answer her question on whether or not the CEO will disclose the written directions concerned in cases where the Chief Executive gives some written directions to the SFC under section 11. If the CEO wants to disclose the directions concerned, he may decide in what manner he will do so, having regard to the actual circumstances. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Financial Services and the Treasury's motion, I will remind Members that if the Secretary for Financial Services and the Treasury's motion to add new clause 1A to the Bill is agreed, Ms Audrey EU may not move her proposed new clause 1A to the Bill.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the Secretary for Financial Services and the Treasury's new clause 1A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Audrey EU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Audrey EU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr James TIEN, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert HO, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr

LEUNG Kwok-hung, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted against the motion.

Mr CHIM Pui-chung abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 44 Members present, 27 were in favour of the motion, 15 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the motion on the Second Reading of the Secretary for Financial Services and the Treasury's new clause 1A has been passed, Ms Audrey EU may not move the Second Reading of her new clause 1A, as it is inconsistent with the decision already taken by the Committee.

CLERK (in Cantonese): New clause 1A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 1A be added to the Bill.

Proposed addition

New clause 1A (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the Secretary for Financial Services and the Treasury's new clause 1A be added to the Bill.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): New clause 1B Accounts and annual report

New clause 1C Accounts of compensation fund.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clauses 1B and 1C be read the Second time, so that section 15(2)(b) and section 240(4) of the principal Ordinance can be amended as set out in the paper circularized to Members.

The amendments aim to empower the CEO to sign the financial statements of the Securities and Futures Commission and those of the Investor Compensation Fund.

These two amendments have been discussed in the Bills Committee and received its support.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 1B and 1C be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 1B and 1C.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that new clauses 1B and 1C be added to the Bill.

Proposed additions

New clause 1B (see Annex II)

New clause 1C (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 1B and 1C be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

SECURITIES AND FUTURES (AMENDMENT) BILL 2005

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

Securities and Futures (Amendment) Bill 2005

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Securities and Futures (Amendment) Bill 2005 be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Securities and Futures (Amendment) Bill 2005.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Mandatory Provident Fund Schemes Ordinance to approve the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006.

PROPOSED RESOLUTION UNDER THE MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move a motion for the passage of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006 (the Amendment Regulation).

Since the implementation of the Mandatory Provident Fund (MPF) System in December 2000, the Government and the Mandatory Provident Fund Schemes Authority (the MPFA) has constantly strengthened and refined the system to ensure that it is in line with the prevailing market practice and serving the interests of MPF scheme members.

Over the past few years, in response to the amendment proposals regarding the MPF legislation raised by the MPFA, we have introduced two amendment bills into the Legislative Council, which were both passed. On the other hand, the MPFA has established the MPF Schemes Operation Review Committee (the Review Committee). The Review Committee comprises representatives of employee and employer groups, service providers, professional bodies, and so on. It is tasked to review the operational aspects of the MPF legislation for further improvements. The Review Committee has completed a series of reviews of investment regulations set out in the Mandatory Provident Fund Schemes (General) Regulation.

In response to the MPFA's proposals, which are based on the recommendations of the Review Committee, we now introduce into the Legislative Council a number of technical amendments to the investment regulations governing MPF funds. In making these proposals, we have

considered the operational experience and the current situation of the financial markets. They aim to enhance protection of scheme members' interests, improve operation of existing provisions, enhance flexibility of MPF investments and remove undue restrictions on investment of MPF scheme funds. We trust that the industry and scheme members will welcome these proposals.

Madam President, the financial markets are developing constantly. To ensure that our investment regulations are in line with the current market situation and are able to serve the best interests of MPF scheme members, it is necessary to review and refine the relevant regulations and technical arrangements from time to time. I hope that Members will support the passage of this Amendment Regulation.

Thank you, Madam President.

The Secretary for Financial Services and the Treasury moved the following motion:

"RESOLVED that the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006, made by the Chief Executive in Council on 9 May 2006, be approved."

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

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

MR WONG KWOK-HING (in Cantonese): A while ago, I heard the introduction made by the Secretary and learnt that the proposed amendments are technical in nature. However, as a Member of this Council from the labour sector, I have been getting strong views from trade unions and the labour sector, expressing the hope that the Government can be urged on this occasion to improve certain measures related to the MPF schemes and enhance the protection given to employees. After collecting views from the trade unions and the labour sector, I would like to make use of this occasion to make 10

recommendations to the Secretary through the President in the hope that he could give serious thoughts to the requests and views from the wage earners and to make a positive response as a result.

The first recommendation is that the Government and the Bureau should consider removing the offsetting arrangement with respect to employer contributions and severance pay. This is because when companies and business organizations close down or wind up, they would often offset the employees' MPF, that is, the employer's contributions, with the severance pay. In other words, only one choice can be made out of the two options available. Originally, the employees would like to have the contributions for use when they are old, but because of this offsetting arrangement, the result is that the employees will suffer losses. Therefore, I hope that the Government will give serious thoughts to this because saving up for old age is a very important incentive for employees joining MPF schemes. But if there is an offsetting arrangement, that would discourage employees from joining the schemes. This is the first recommendation.

The second recommendation is that the Government can consider expanding the trade schemes to industries other than the construction and catering industries. Currently, the trade schemes only apply to the construction and catering industries. However, we can see that there are still employees in many other industries who do not have a stable income. Many of them, for example, tourist guides, have to rely on other allowances and commissions for a living. We hope that the trade schemes can be expanded to industries other than the construction and catering industries. This will enable more wage earners to enjoy protection. This is the second recommendation.

Third, there is a widespread problem of false self-employment. This is caused by employers who have altered the employment relationship because they want to evade making MPF contributions. As a result, many people who used to be employed now become self-employed, that is, they employ themselves. Thus the employers may evade making contributions. I therefore hope that active measures can be adopted by the Government to cope with this situation. This is the third recommendation.

The fourth recommendation I wish to make is that as wage as defined by some employers would include housing allowance. These employers will exclude wage paid in the name of housing allowance from the calculation of the

amount of employer contributions to MPF schemes. So in such circumstances, the actual benefits available to the employees will be adversely affected. We hope the Government can consider this and make further improvements.

The fifth recommendation is that the Government should lower the age eligible for obtaining accrued benefits. Currently, employees must reach the age of 65 before they are eligible for such accrued benefits. Many wage earners have complained to me that it is very difficult to get a job these days and it is likewise difficult to work until retirement at the age of 65. Actually, there are many people in their fifties who are out of work but who are also unable to get their MPF contributions. We hope the Government can consider lowering the eligibility age to 50. At present, the eligibility age for applying dependent parent allowance is 50. Can the Government consider lowering the eligibility age for obtaining MPF payments to 50? I hope the Government can give this positive consideration.

The sixth recommendation is that the Government can expand the scope of coverage of the MPF schemes. Now both foreign and local domestic helpers are not given protection in this aspect. The population of these wage earners is quite large, but they do not enjoy any such protection. These people have also to face the demands of a retirement life when they are old. They also need to save up for a rainy day. For this reason, should they not be covered? I hope the Government can give this position consideration. This is the sixth recommendation.

The seventh recommendation is that I hope the Government can step up its efforts to eradicate the problem of default payment of MPF contributions by unscrupulous employers and to impose legal sanction on those who do so. Actually, this situation is very much like wage defaults by dishonest employers. Employers who default on wages will of course have a problem of non-payment of MPF contributions. Often when we try to recover defaulted wages or lodge such complaints, we would discover that those employers have not made their MPF contributions for a long time. Why do such things happen? The reason is, I am afraid, lack of supervision and rigorous enforcement. We therefore hope that the Government can step up its prosecutions and impose heavier penalties. Only by doing so can the wage earners be helped and the problem of unscrupulous employers defaulting on MPF contributions be eliminated. If the Government can do well on these, there can be an effect of killing two birds with one stone. For there will be no more employers defaulting on MPF

contributions and the problem of wage defaults can also be addressed. It is unfortunate to see that the incidents that have recently occurred are getting more and more serious in nature. Over the past couple of years or so, such things occurred in the construction industry in companies like Dickson Holdings. Similar things also happened in many government contractors of security and cleaning services. The employees in these trades are worried that they will lose their jobs if they report on such problems. So the Government must consider how to plug this loophole to ensure that no impact will be caused on employees after they have reported on irregularities. Lest the employees will not dare to report on defaults on MPF contributions even if there are defaults because they do not want to lose their jobs. We hope the Government can consider this point.

Then I would like to put forward the eighth recommendation in the hope that the Government can pay attention to the creation of some false short-term employment contracts by some unscrupulous employers. According to current stipulations, employers are required to make MPF contributions if an employment relationship exists between both parties for 60 days or more. But it is precisely because of this requirement that many dishonest employers will require employees to take leave or to sign a new contract on the 50th day or before the 60th day. As a result, there would be a never-ending cycle and employees will work forever for some 50 days at most and the employment relationship with their employers will never last to the 60th day. Hence the employers will never have to make any MPF contributions. This is a very great loophole indeed. And often this loophole is exploited on the most vulnerable workers. They are the ones with the least bargaining power and competitive edge, such as those in the cleaning and security service industries. If the MPF problem is not solved in the institutional context, there would be a situation where the vulnerable will be denied retirement protection in their old age. Thus the original purpose of the Government in setting up the MPF System will be defeated. In this respect, I hope the Government can crack down on this practice of fraudulent short-term employment contracts.

The ninth recommendation on improvement is that employees should be given the priority in choosing MPF schemes. Under the existing system, employers have the absolute power in choosing and determining the investment direction of the contributions made to the main MPF schemes. Once the employers have made a decision, the employees will be denied the right to choose. In the past, when the relevant Ordinance was first enacted, the

Government was of the view that both employers and employees were not familiar with the operation of the MPF contributions. Hence such a rule was laid down. Now, after the system has operated for so many years, would it not be the right time for changes so that employees will have the right to choose? Now employees have no such right at all.

Moreover, when these wage earners get a statement on their MPF schemes, actually they do not understand the contents and what they mean. In view of this, the Government should consider using simple language and standardized jargons so that employees will know the gains or losses they have made with the MPF schemes joined. The Government may consider issuing passbooks like the savings account passbooks. This will enable the employees to know how much money they have saved, whether the employers have made the contributions or whether the value of their units saved has gone up or down. All these can be known if they update their passbooks like what they do with their bank passbooks. This would be simple and convenient. The Government must make improvements like these so that wage earners can know about the situation in a simple, clear and convenient manner. This is also the reason why I use the example of savings account passbooks to illustrate my point in what can be done to improve the administration of MPF schemes. If the Government can do this, I am sure both the wage earners and the bosses will love it. In this way, there would be greater incentive for participation in MPF schemes and people will support them.

The 10th and the last recommendation is that we hope that there would be more efforts by the Government to educate the grass-roots employees on choosing their investment funds. Many such wage earners have asked me how they should choose their investment options in order to ensure that the value of their hard-earned money will not diminish. Many of them do not know if they should choose high-risk, low-risk or medium-risk investment options. They do not know, given their respective age, what kind of investment portfolio would suit them better and what among the available portfolios will enable them to maximize benefits and protection. In my opinion, the Government should do something for these wage earners so that they can gain value for their investment and really reap benefits from their investment and get protection. For this reason, more information and education on investment should be made available. It is important that they can have easy access to such information and education and know more about the rights and benefits to which they are entitled under the MPF schemes.

In this meeting today I have listed 10 improvement recommendations made by wage earners and the labour sector in the hope that the Government can respond to them. Though the 10 recommendations which I have made may not be the contents of the amendments as the latter are very technical in nature, I still hope very much that the Government may not be narrow-minded and it can respond to these proactive requests from the wage earners. Thank you, President.

MR JAMES TO (in Cantonese): President, as you have heard just now, the speech made by Mr WONG Kwok-hing does not bear any relevance to this motion. I would not mind if a related debate is proposed separately, but this meeting will just fall apart if everybody speaks in the way Mr WONG has done.

PRESIDENT (in Cantonese): I have permitted Mr WONG Kwok-hing to touch on these topics when he speaks mainly because when the Secretary for Financial Services and the Treasury spoke to move this motion, he also mentioned a review of the operations of MPF by the employers and employees. Having said that, I would also think Mr James TO is right, for as a matter of fact, Mr WONG Kwok-hing has used up all the 15 minutes of the time limit to talk about the demands from the labour sector. He could have made these demands on other occasions instead of when a debate is held on this resolution.

MR CHAN KAM-LAM (in Cantonese): President, it is common knowledge that MPF schemes in Hong Kong are not sufficient to provide retirement protection to employees. If people want to maintain a standard of living comparable to that before retirement, they must increase their contributions in advance or make other kinds of investment and saving. Some time ago some banks conducted a survey and found that most of the salaried class in Hong Kong hold a view that it would not be sufficient if they just rely on MPF as a retirement protection. Therefore, it would be most opportune for us to undertake a review of various aspects of MPF such as restrictions on investment, and so on.

The problem is, there are a great number of restrictions on investment and they cannot adapt to market changes. This explains the not at all satisfactory rate of return of MPF investments. Despite the fact that the yield of MPF schemes last quarter was 4.51%, which out-performed the interest rates for large deposits placed with any one of the banks in Hong Kong, I think that the main reason of this outstanding performance is due to the robust activities in the stock

market. However, we must not be too optimistic about it. Another thing is that the administrative charges of MPF schemes are very high and this will affect the yield. As we study the recommendations made by the MPF Schemes Operation Review Committee, our view is that the Government has made some amendments and of course we in the DAB would support them, but we would hope that the Government can think more about the concern expressed by the public and see how the existing MPF System can be perfected.

In addition, I would like to point out that in order that the public can make better plans for their retirement life, we should of course encourage the employees to increase their contributions. In this respect, the Government should provide more concessions in tax. Actually, the tax concessions we ask are not excessive. If people contribute \$1,000 each month voluntarily, it would only be \$12,000 a year and a tax concession for this amount is very small. However, if people are to be encouraged to contribute voluntarily to MPF schemes, they can expect better retirement protection later.

In addition, we have been talking about the setting up of personal portable MPF accounts. This would reduce the administrative costs and account holders can know readily how many jobs they have had, how much money they have saved, and so on, without having to check a number of accounts. We hope that the Government can give serious thoughts to this. In fact, all the suggestions we have made are workable, but we do not know why the Government and the industry are not willing to put them into practice. Such moves can increase transparency in fund operations, enhance competition in the market and the employees will benefit from the greater efficiency thus achieved. This means that in making investments, the market will offer a higher return to the employees. This will reduce administrative costs as well. We hope that the Government will undertake an in-depth study into this in the coming review.

With these remarks, Madam President, I support the motion moved by the Government.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no Member wishes to speak, I now call upon the Secretary for Financial Services and the Treasury to speak in reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, please let me tell Mr WONG Kwok-hing and Mr CHAN Kam-lam through you that I have listened to their views and I will reflect them to the Management Board of the Mandatory Provident Fund Schemes Authority (MPFA), as we all know that the Management Board of the MPFA is highly representative, comprising of representatives of the labour sector, employers and the Government.

As far as I understand it, the MPF issues will be discussed at the meeting of the Legislative Council Panel on Manpower on 20 July. The two Members can express their views at the meeting then. However, I am very grateful to the two Members for their valuable input. In fact, I have already conveyed Mr CHAN Kam-lam's view on the "passbook" to the MPFA many times, and they will actively follow it up and look into it. Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two proposed resolutions under the Mutual Legal Assistance in Criminal Matters Ordinance.

First motion: Approving the Mutual Legal Assistance in Criminal Matters (Israel) Order.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that the first motion under my name be passed, that is, the resolution to make the Mutual Legal Assistance in Criminal Matters (Israel) Order, be passed. I shall move another resolution to make the Mutual Legal Assistance in Criminal Matters (Poland) Order in a short while.

Hong Kong is fully committed to international co-operation in combating serious crimes. In this respect, we have been expanding our network of bilateral agreements with other jurisdictions on mutual legal assistance in criminal matters. These agreements enhance international co-operation in the fight against transnational crimes and ensure reciprocal assistance between the contracting parties. We have so far signed 20 bilateral agreements with other jurisdictions.

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

Pursuant to the Ordinance, the Chief Executive in Council has made two Orders to implement the bilateral arrangements on mutual legal assistance in criminal matters with Israel and Poland respectively. These two Orders apply the arrangements prescribed in the Ordinance between Hong Kong and Israel, and between Hong Kong and Poland, allowing assistance to be provided or obtained in accordance with the procedures set out in the Ordinance and the provisions under the Agreements. The Orders are substantially in conformity with the provisions in the Ordinance. However, as legislation and arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is necessary for the relevant orders to modify some of the provisions of the Ordinance to reflect the practices of individual jurisdictions. Such modifications are necessary to enable Hong Kong to discharge its obligations under the agreements concerned. The modifications made for the bilateral agreements with Israel and Poland are summarized in Schedule 1 to each of the two Orders.

The Subcommittee set up by the Legislative Council scrutinized the two Orders in March 2006. The Administration has explained in detail matters relating to the Orders, including the scope of assistance, legal rights of transferred persons and grounds for refusing the provision of assistance.

With regard to the Agreement Hong Kong signed with Israel, the Subcommittee was concerned that the grounds for refusal of provision of assistance were set out as discretionary grounds. The Subcommittee requested the Administration to consider undertaking that it would not make a request for assistance involving mandatory grounds for Hong Kong as a requested party to refuse provision of assistance under Hong Kong law, even if Israel would discretionarily consider whether assistance would be refused on such grounds.

As we have explained to the Subcommittee, the relevant provision has been drafted to take into account that under Israeli law, all grounds of refusal are discretionary. The Ordinance specifies that Hong Kong may only make requests for assistance in respect of criminal offences in contravention of the Hong Kong law. Such requirement in conjunction with the relevant provisions of the Agreement will require Hong Kong, when making a request to Israel for assistance, to clearly set out the purpose of the request, the criminal offence and laws concerned, the nature of the assistance requested, and the connection with the criminal investigation or prosecution concerned. Hong Kong is obliged to honour its bilateral agreements in good faith and in all likelihood would not knowingly make a request if any of the mandatory grounds for refusal under Hong Kong law applied. For example, if a person has already been convicted, acquitted or pardoned in Israel for the same offence, Hong Kong will not request Israel to provide assistance, as any subsequent attempt of prosecution in Hong Kong would be futile.

The Subcommittee reported to the House Committee on 12 May 2006 on its scrutiny of the two Orders. I would like to thank the Chairman, Mr James TO, and other members of the Subcommittee for their support of my submission of the Orders to the Legislative Council for approval.

To strengthen our co-operation with foreign jurisdictions in respect of mutual legal assistance in criminal matters, it is important for the two Orders to be made to enable the bilateral agreements to be implemented.

I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Israel) Order. I shall in a moment move the resolution to make the Mutual Legal Assistance in Criminal Matters (Poland) Order.

Thank you, Madam President.

The Secretary for Security moved the following motion:

"RESOLVED, that the Mutual Legal Assistance in Criminal Matters (Israel) Order, made by the Chief Executive in Council on 7 February 2006, be approved."

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

MR JAMES TO (in Cantonese): President, as Chairman of the Subcommittee on Mutual Legal Assistance in Criminal Matters (Poland) Order and Mutual Legal Assistance in Criminal Matters (Israel) Order, I now speak on the motion moved by the Secretary for Security.

The above two Orders set out respectively the mutual legal assistance agreements in criminal matters entered into between the SAR and Poland and between the SAR and Israel. The Orders also contain modifications to the Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance).

When deliberating on the two Orders, the Subcommittee has made an article-by-article comparison of the provisions of each Order with those in the Hong Kong SAR Model Agreement on mutual legal assistance in criminal matters. The Subcommittee is especially concerned about whether or not these agreements provide enough protection to the legal rights of a person involved in criminal law proceedings and those provisions which are different from those found in the Model Agreement.

When deliberating on the Israel Order, members expressed concern whether the reference to "prevention of offences" in Article 1 is consistent with the ambit of the Ordinance, and whether Hong Kong may be requested to provide assistance on matters which are not criminal or where no offence has taken place.

The Administration has explained that inclusion of the reference to "prevention of offences" in Article 1 is not inconsistent with the ambit of the Ordinance. The Ordinance requires that assistance may only be provided in respect of a "criminal matter" which is defined to mean an investigation, prosecution or ancillary criminal matter (that is, a matter relating to restraint and confiscation measures). Any request for assistance must also be processed in accordance with the requirements under the Ordinance. By taking such actions to investigate, prosecute and restrain/confiscate criminal proceeds, the Parties implicitly provide assistance to prevent further offences from happening. The Administration has also pointed out that such references can be found in the agreements executed with other jurisdictions such as Australia, France, New Zealand and the United States.

The Subcommittee has noted that Article 4(1) in the Agreement with Israel makes the denial of assistance either mandatory or discretionary depending on the law of the Requested Party. The Administration has explained that this has taken into account the fact that under Israeli law, all grounds for refusal are discretionary whilst under Hong Kong law, all grounds are mandatory grounds of refusal. I have pointed out that as some of the grounds for refusal are mandatory in Hong Kong, Hong Kong should explicitly state that it should not or will not make requests for assistance if the requests relate to these grounds. I have also requested the Administration to make an undertaking in this matter.

With respect to this, I think Members should have heard the Secretary for Security say in his speech just now that the Ordinance provides that requests for assistance by Hong Kong may only be made for the purpose of criminal offences in breach of the laws of Hong Kong. Hong Kong will not knowingly make a request if any of the mandatory grounds for refusal under Hong Kong law applies.

Article 7(4) of the Agreement provides that if the Court of the Requested Party (for example, the Israeli Courts in this case) issues a compensation order requesting the Requesting Party to pay compensation to an injured third party, then payment shall be made by the Requesting Party. This provision is inserted at the request of the Israeli side. Members of the Subcommittee expressed great concern about the financial implications arising from compensation ordered by a Court of the Requested Party. In this connection, members asked the Administration to obtain information from Israel on the criteria for awarding compensation under the laws of Israel. The Administration subsequently

informed the Subcommittee that it had contacted the Israeli side for information on the issue of awarding compensation in such cases under Israeli law. The Administration would take into account such information before making a request to Israel for seizure, immobilization or forfeiture of asset or restraining order pursuant to the Agreement. In this connection, I would like to remind the Government in my personal capacity that it is very rare for a court of law of another country to request compensation. In addition, our understanding of the law or courts of law of that country appears not to be as good as other common law jurisdictions. Therefore, if we are to make such a request to Israel, I hope the Government can make careful consideration for the reason that we have no idea as to how great compensation can be awarded by the courts of law in another country. The situation is like putting all the fiscal reserves or financial commitments of the SAR at stake. I hope such a request will only be made when the case involved is of a most serious nature and unless it is really of an extremely serious nature, if not, the Government must reconsider the case.

As for the Poland Order, the Subcommittee has noted that Article 7(3) of the Poland Order provides that nothing in the Article shall preclude the use or disclosure of information to the extent that such information is exculpatory to the defendant in a criminal prosecution. I suggest that the Administration should consider making this a standard provision in future agreements with other jurisdictions.

President, the Subcommittee supports the motion moved by the Secretary for Security in this meeting that the Israel Order and the Poland Order be approved.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I will call upon the Secretary for Security to speak in reply.

SECRETARY FOR SECURITY (in Cantonese): Madam President, I thank Mr James TO for spending so much time on the scrutiny of the two Orders.

With regard to the views expressed by him earlier, we will consider them after this meeting and if appropriate, we will certainly follow them up. Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Second motion: Approving the Mutual Legal Assistance in Criminal Matters (Poland) Order.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that the second motion under my name, that is, the resolution to make the Mutual Legal Assistance in Criminal Matters (Poland) Order, be passed.

In moving the resolution to make the Mutual Legal Assistance in Criminal Matters (Israel) Order earlier, I have explained the purpose and importance of making orders on mutual legal assistance in criminal matters. I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Poland) Order.

Thank you, Madam President.

The Secretary for Security moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Poland) Order, made by the Chief Executive in Council on 7 February 2006, be approved."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order and the Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR SIN CHUNG-KAI (in Cantonese): Madam President, some words and sentences may be hard to read. I move that the motion, as printed under my name on the Agenda, be passed.

At the House Committee meeting on 26 May 2006, Members formed a Subcommittee to study the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order and the Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order introduced to this Council on 24 May 2006. In order that the Subcommittee can have ample time to carry out its work and to report to the House Committee on the results of such deliberations, I propose in my capacity as Chairman of the Subcommittee that the period for amending such subsidiary legislation be extended to 12 July 2006.

Madam President, I urge Members to support the motion.

Mr SIN Chung-kai moved the following motion:

"RESOLVED that in relation to the -

- (a) Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order, published in the Gazette as Legal Notice No. 105 of 2006; and
- (b) Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order, published in the Gazette as Legal Notice No. 106 of 2006,

and laid on the table of the Legislative Council on 24 May 2006, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 12 July 2006."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr SIN Chung-kai be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Two motions with no legislative effect.

First motion: Vigorously promoting the development of social enterprises.

VIGOROUSLY PROMOTING THE DEVELOPMENT OF SOCIAL ENTERPRISES

MRS SOPHIE LEUNG (in Cantonese): Madam President, social enterprises is a new term. A couple of weeks ago, some Honourable colleagues asked me what in fact social enterprises were. It is a new concept and, put in simple terms, social enterprises include the following elements: (1) business is brought in from a market economy perspective so that there can be sustained operation and income, hence sustainable development; (2) the profits earned are used in the development of the social enterprise concerned, hence it can be regarded as a kind of social investment; (3) the existence of clear social goals such as offering help to the disadvantaged groups in a direct or indirect manner in order to facilitate their transition from "welfare to self-reliance".

The most important value of social enterprises lies in their thinking and concepts. This is also the topic which I hope Members could explore, understand and contemplate today. First of all, a conviction held by social enterprises is: paths are carved out by people walking. Such is the belief that accounts for the success of Hong Kong. We must aim at self-enhancement, build up self-esteem and self-confidence, face challenges and adversities with courage and hence put ourselves in a more advantageous position.

Social enterprises make use of this conviction in their attempt to promote a mode of business operation that will integrate social aims and market economy. One example is to adopt the mode of co-operatives so that the socially disadvantaged groups can upgrade their skills level and employability through placement in a real-life working environment. This will help improve the lot of the socially disadvantaged, enhance their ability to confront challenges and adversities. In the end, they will become self-reliant.

The concept behind social enterprises and their mode of operation is to elevate welfare policies to a more proactive level. In other words, the aim is to change the support framework largely consists of service delivery into a mode of empowerment and self-reliance. In the past, welfare policies in Hong Kong stressed too much on service delivery to the neglect of upgrading the capabilities of the community groups in question. As a matter of fact, a policy direction of empowerment and self-reliance is truly in the best interest of the socially disadvantaged. It can ease the mounting pressure from demands for welfare services while also alleviate the sentiments of social workers feeling being burnt out.

Recently, surveys have found that one quarter of the social workers interviewed have depression and anxiety symptoms. The pressure they felt comes from the workload which is more than they can bear. 95% of the interviewees think that the source of their pressure lies in the great number of cases which is beyond their capacity. Currently, the Social Welfare Department recommends that each social worker should handle 50 to 60 cases. But the reality is that some social workers have to handle as many as 186 cases. We must change the service-centred mentality in order to cope with the problem of job stress among social workers. What we should do is at least to enable some of the socially disadvantaged who are able to become self-reliant. Consequently, their reliance on welfare services will diminish. Therefore, the social work sector must examine the current mode of service delivery from a perspective of innovation and self-reliance.

The development of social enterprises must carry community-wide participation and it must — Madam President, I stress — break away from the confines of the pure social work sector. There must be broad vision and tolerance, for the social enterprises rely on the interplay of the market economy and social goals. There should be balanced development and complementary actions between both. The business sector is conversant with the theory and practice of market development and business management. Therefore, it is very important that capable talents from the business sector can be recruited into the social enterprises so that the wisdom of doing business can be brought into the social enterprises.

Lately the British social entrepreneur Graham MORRIS came to Hong Kong to share his story in bringing his close-to-30-year experience in the business sector into the social enterprises. In his view, social enterprises are not charities and they are also different from business organizations. Social enterprises look for business opportunities from the perspective of social needs and often such business ideas are innovative. Business people joining social enterprises may bring in new ideas and management style. They can examine market developments from a mature and objective approach. They can bring in personal ties. These are vital to the survival and meeting the needs of the social enterprises.

Hence the key to success is cross-sector collaboration. To enable cross-sector collaboration to succeed, opportunities for collaboration in a complementary and mutually beneficial environment should be explored. Madam President, this is not a simple relationship of someone giving and the other party taking. The various sectors that take part should be required to contribute while they can gain something in return. This is because they can be more motivated in a mutually beneficial environment. The idea is like the concept of business ecology in business management theory and it is actually a perpetual and self-driven social cycle.

In addition, it is of equal importance to upgrade the expertise of employees in social enterprises. The Government should take immediate actions in education and actual support, such as setting up support services with social enterprises as the target. Then work should start in formulating social goals and developing local community economy. Those in the social enterprises should be given community information. Networks with the neighbours should be forged. Training in basic commercial knowledge and mentorship counselling should be offered. Speaking in longer terms, the Government should really

need to train up local social entrepreneurs through educational efforts. At the present stage, the universities can be given incentives to develop related courses at different levels and as far as I know, this is presently being done. These courses may include short-term extramural courses, associate degree programmes and courses offered in university business schools. The aim is to arouse social awareness in this aspect and we cannot just rely on efforts of the Government alone.

At this infancy stage of social enterprises, I agree that the Government should do its part to ensure a smooth implementation of the policy concerned and remove hurdles in administration that will hamper the development of social enterprises. Hence an environment conducive to the growth of social enterprises can be created. In the Budget this year, it is proposed that studies will be conducted to see how social enterprises can be assisted to bid for government contracts in accordance with the present government outsourcing principles. In addition, many views have come from the public that a review should be conducted of the Co-operative Societies Ordinance. In my opinion, this Ordinance as it is should not be made a cause of our concern because it is actually a piece of legislation for the agriculture and fisheries sector. We should enact a brand-new law on co-operatives applicable to social enterprises. We should start discussing it and conduct studies into it right now. If we can put into practice some measures that can serve some social goals, it will be helpful to the growth of social enterprises. On the issue of tenders which may help solve the unemployment problem, while, for example, social enterprises can be given a higher score in the points system, I oppose legislation for this purpose. In doing so the social enterprises will not only be able to succeed in bidding for a contract, but the private sector can also be given incentives to do business with the disadvantaged groups because of social enterprise considerations. Now some public bodies such as the Hospital Authority have introduced a similar tender policy. The Government should consider making this part of its long-term strategy.

Social enterprises are commonly regarded a means to empower the disadvantaged groups. However, I would think that other parts of the community, such as subsidized bodies and even charities should also be run in the spirit of social enterprises. They should seek to open up more room for development from the perspective of market economy. They should not have a "you pay I work" kind of mentality. The latest example of this is "Bravo China — The 9th Anniversary of Hong Kong Reunification" which is a variety show soon to be held. The show is jointly presented by many mainland and Hong

Kong organizations in collaboration with the SAR Government. The original plan was to distribute tickets free to the civil organizations. However, it was thought that the event indeed offered an opportunity for charitable organizations to make an income and to meet the people face to face. There was also a way where the public could be given a fair chance to enjoy this kind of variety show live. So with the hard work of many people, we forged collaboration with the Community Chest of Hong Kong and other related organizations, and the tickets for the show would be put on public sale. The proceeds would go to the Community Chest for charitable purposes. This example serves to show that the spirit of social enterprises is to seize opportunities in the market, take aggressive actions and propose innovative ideas which aim at opening up sources of income and achieving social goals.

Madam President, we should trust the disadvantaged groups, since paths are carved out by people walking. We should encourage the disadvantaged groups to take on the path of setting up social enterprises. They should be helped to acquire more information with an innovative spirit of entrepreneurs. They should learn more to face up to the challenges. This would be a decisive factor if they want to stop being helped and take on the path to self-reliance. There are many stories of successful enterprises in Hong Kong and the key to their success lies in whether or not they can seize the opportunities and take on the challenges. If there are no challenges, how can there be opportunities? As the Financial Secretary said recently to this effect, "We should embrace competition and meet challenges with a positive frame of mind." The agility, vitality and vigour of Hong Kong people and their ability to grasp the trend and ride on it must not be underestimated. It is because of all these that this tiny place of Hong Kong could have become the focus of attention in the nation both before and after the reunification in 1997 and actually, ever since the idea of "one country, two systems" has been implemented. In my opinion, what the enterprises can do may also be achieved by the public. The key lies in whether or not we have the confidence and whether or not we can be bold enough to take the first step.

With these remarks, I beg to move.

Mrs Sophie LEUNG moved the following motion: (Translation)

"That, as social enterprises can effectively achieve social objectives, including promoting community development and helping the

disadvantaged, through corporate strategies and commercial operations, and they attach more importance to social values than to pursuing maximum economic benefits, this Council urges the Government to vigorously promote the development of social enterprises, with the objectives of enhancing social capabilities and establishing positive social values, by actively implementing the following measures:

- (a) establishing the value and raising the public awareness of social enterprises through publicity and education programmes in schools and the community;
- (b) promoting cross-sector collaboration and developing a platform for participation in different aspects and facilitating the establishment of partnership, so that various sectors can expand the scope for collaboration in a complementary and mutually beneficial environment;
- (c) putting in place support services to meet the actual needs of social enterprises, including the provision of information, basic training and mentorship support, in order to enhance the social capital of the disadvantaged;
- (d) eliminating administrative and policy barriers which may hinder the development of social enterprises, so as to create an environment conducive to their growth; and
- (e) enhancing the training for the general public so as to teach them how to develop social enterprises;

in addition, as local and overseas experience in developing social enterprises indicates that the successful ones possess such management elements as professionalism and market sensitivity, the Government and various sectors of the community should, in developing social enterprises, break away from the confines of the pure social work sector by encouraging and embracing the participation of willing and capable talents from the business sector."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Sophie LEUNG be passed.

PRESIDENT (in Cantonese): Four Members will move amendments to this motion. The motion and the four amendments will now be debated together in a joint debate.

I will call upon Miss CHAN Yuen-han to speak first, to be followed by Dr Fernando CHEUNG, Mr Frederick FUNG and Mr Albert HO, but no amendments are to be moved at this stage.

MISS CHAN YUEN-HAN (in Cantonese): In the past few years, such factors as the financial turmoil, economic restructuring, and so on, have highlighted the structural unemployment in Hong Kong becomes apparent. A great number of unemployed and poor grassroots have appeared. In such circumstances, many non-governmental organizations (NGOs) and other groups have thought of ways to provide employment for these people and to help these workers adapt to the conditions in the labour market and boost their confidence in looking for employment. Therefore, we have seen the emergence of social enterprises run in the forms of co-operatives and local community economy. They have become an effective poverty assistance method.

Madam President, the aim of running social enterprises is unlike that of the other enterprises which just pursue profits. Social enterprises aim at helping the disadvantaged through commercial operations, hence fostering the further development of social capital. Examples are mobilizing some women and unemployed workers to form cleaning teams or run tuck shops, offer personal services like attending mothers of new-born babies, household cleaning, and so on. These are examples of some of the most common social enterprises that have appeared in Hong Kong in recent years. Despite this development, social enterprises in Hong Kong are still at an initial stage as the seeds of social enterprises have just been sown. Some time ago the Commission on Poverty organized a conference on social enterprises. This served to inform us of the mature experience of other countries in developing social enterprises. We know there is still a very long way to go if we want to make any achievements in social enterprises.

Madam President, as I said just now, social enterprises in Hong Kong are still at a budding stage. They are an approach to poverty alleviation that has just been adopted. In order that this small sapling can grow into maturity, the Government would need to water and apply fertilizers. In other words, it must

make the right shift in policy and provide the right kinds of support. Mrs Sophie LEUNG has made many recommendations in the original motion and for my amendment, I have added two points, one is on amending the Co-operative Societies Ordinance and the other is on stipulating in the outsourcing contracts of government departments and public organizations that social enterprises be given priority in tender exercises.

At present, many social enterprises in Hong Kong are run by some unemployed people and women. As they do not have any business experience and their capital is limited, so they would only run their business in the form of a co-operative as this will exempt them from paying business registration fees and profits tax which is rather high. However, the existing Co-operative Societies Ordinance is very much outdated as it was enacted years ago with farmers and fishermen in mind, therefore, a lot of difficulties would be faced if people nowadays wish to set up a co-operative. The Ordinance is essentially out of touch with the developments of the times. An example is when people make an application to register a co-operative, there should be at least 10 people. It would be very difficult for a social enterprise which is usually run on a small capital to afford the salary of 10 persons. I have been told by people from many groups that it is not that they do not want to set up a co-operative to help the unemployed workers, but they find it difficult to afford such a prescribed scale if a co-operative has to hire 10 persons from the very beginning.

As a matter of fact, there are quite a number of problems related to the operation of co-operatives. With respect to mandatory provident fund (MPF), for example, many members of co-operatives are required to make a double amount of MPF contributions because they are both employers and employees in a co-operative. Why can they not be classified as self-employed people in the ordinary sense? This is due to restrictions in policy and law. In addition, in terms of financing from the banks, taking out insurance policies and making out cheques, and so on, these cannot be done in a flexible manner due to the outdated Ordinance. All these have served to impede the overall development of social enterprises.

Madam President, each year government departments will outsource contracts worth tens of billion dollars, so if some of these can be briefed out to the social enterprises, it would be a win-win situation for both the Government and the social enterprises. As we all know, there is a very high threshold if

companies want to bid for some outsourced government services. For example, the companies are required to have a certain amount of capital and scale of operation and they should have experience in undertaking similar services on contract in the commercial sector. Then they have to prepare tenders. Tenders are very important documents and if you know how to write a good tender, you are likely to get the contract. But if you do not, you will not get a contract even if you show a great deal of sincerity. All these are very difficult for social enterprises or co-operatives running on a small capital.

I therefore propose that when public services are to be outsourced, some convenience or concessions should be offered to the social enterprises. These would include lowering the threshold for social enterprises bidding for outsourced contracts and giving a higher score to social enterprises and enterprises employing the unemployed in the vetting of tenders. This would not only help social enterprises in winning the contracts but also encourage private enterprises to employ more unemployed people.

Madam President, lastly, I would like to talk about another point in my amendment. I have deleted the words "break away from the confines of the pure social work sector" from the original motion. Why? This is because we all know that social enterprises are run with business elements in mind, like commercial operation and marketing strategies. When these social enterprises have to establish a long-term partnership with the business sector, these business elements cannot be abandoned. When we helped the poor people to organize some flea market, we did something and we knew that there must be participation and support from the business sector. We fail to see any harm in doing so. But the problem is, as I have just said, social enterprises in Hong Kong are still at a budding stage and we do not know much about how social enterprises should operate. If at this time we want to break away from the so-called confines of the pure social work sector, I would think that this is somewhat premature. If we just ask these people to form a social enterprise themselves and as they do not have any experience at all, and if they are asked to look for help from the business sector, what would happen? I am not saying that the business people are not interested but I do not see they are very keen on the idea. And if they are, the business sector should have formed some more social enterprises for the unemployed. But these are very rarely seen. Most of these social enterprises are run by non-profit-making organizations aimed at helping the unemployed to re-enter the job market.

Under such circumstances, I think that it is very hard to break away from such confines. It would be impossible to do so at present. I have done some work on this and I have talked with some unemployed women. I found that if we do not help them, there would be no way they can know about how it should be done. I recall many years ago in a public housing estate, there were some very poor women and they were mostly new arrivals to Hong Kong. They came to talk to us about their plight. I suggested setting up something like the social enterprises and I asked them to put these suggestions into practice. But they wanted me to do it in their place. I did not have the means to carry out these projects. I tried to find some groups to help them and in the process I realized that they really needed help from some groups and up to a certain point before they could operate on their own. We should accumulate more experience of this kind. By then we can discuss this issue. The situation now is like children needing a babysitter and if there is no babysitter to tell them what to do, they may end up making a detour and get to nowhere.

I hope Members can understand, and I wish to stress as well, that very often the start-up funds of these enterprises have to be provided by the non-profit-making organizations. We may say that such a request can be put to the business sector. But it is very difficult. I hope very much that some examples can be given in this respect so that our Honourable colleague, Mrs Sophie LEUNG, could see the point that these needy people in society would like help from some non-profit-making organizations, which is very important. Furthermore, I do not see there should necessarily be mutual exclusion among these three parties, that is, the non-profit-making organizations, the job-seekers or the unemployed, as well as the business sector. I find that they are having a good time when they work together. This is precisely because they come from different sectors. For me, I find this development quite a healthy one.

Madam President, the words I have put in my amendment may touch the nerves of some Honourable colleagues and the Government. I hope the Government can address squarely the problems mentioned by me. I mention in my amendment that "Hong Kong has been stuck with the problem of structural unemployment for a long time, it is very difficult for the grass-roots people to seek employment; the monopoly of consortia and the tilting of government policies towards large consortia have also deprived the grass-roots workers of the opportunities to start small businesses". I hope the Government can remove these obstacles. We can actually see many people running a small business do have their own room for development. Often when government policies are

biased in favour of the consortia as we have seen, these owners of small businesses are finding it very difficult to survive. But they are still working very hard to sustain their families and they want to make some achievements. When government policies shift, they will have to face hardship. For example, about the markets and stalls supervised by the municipal councils and the Housing Authority, we have been talking about the issue for a long time. Can the Government improve the conditions there so that they can compete with the large supermarkets? From the attitude displayed by the Government, we know that it has not done it. The situation facing the owners of small businesses is that once they have started their business, it would be almost time for them to close down.

When we talk about social enterprises, we can see that a large number of small businesses are facing a threat to their survival. At a time when the concept of social enterprises has been raised in the Budget this year and as the Commission on Poverty has also done a lot work in this respect, I hope the Government can really face up to the other side of the matter, that is, the plight of the small businesses which are finding it very hard to survive in competition with the consortia. Can the Government think about this when it is to formulate its policies? I hope very much that the Government will not encourage the setting up of social enterprises on the one hand and kill the small businesses on the other. Why can our policies not open up new horizons for them? If the Government says that its policies are not tilted towards the giant consortia, then please improve the business environment of markets of the former Municipal Councils and the Housing Authority so that the operators can run good businesses there.

Madam President, I so submit. I support all the other amendments,

DR FERNANDO CHEUNG (in Cantonese): President, first of all, I would like to thank Mrs Sophie LEUNG for moving this motion. This motion on social enterprises is in fact very important. Recently, we learn that social enterprises have become a major policy or strategy of the Commission on Poverty (CoP) for the fight to eliminate poverty. The latest news is that the CoP held a meeting yesterday in which details were laid down for the Enhancing Self-Reliance Through District Partnership Programme. The Programme has a funding of \$150 million and over the next five years, there would be \$30 million per annum for application by various organizations. The Programme would provide seed money for the development of social enterprises in Hong Kong.

President, the term social enterprises is quite interesting, for it has put together two very different things. The word "social" seems to refer to matters of public interest and that matters about the needy groups that warrant consideration. The word "enterprises" refers to those organizations whose major aim in the market is to make profits. The values held by the enterprises are mostly for the furtherance of private interest and consideration will be made from the perspectives of competition, market mechanism and business operation. Will it work if these two things are put together? Can social enterprises alleviate poverty and help people in need or some disadvantaged groups break away from poverty? I think this is a lofty ideal and a direction that merits our exploration and efforts.

That the Government can provide some funding at the initial stage is a very good thing. This is also something we are very pleased to see. But apart from providing funding and the motion moved by Mrs Sophie LEUNG today, we would expect that there will be other policy initiatives or even matching initiatives in the legal framework. For if not, this direction of social enterprises may not be brought into full play and will not be effective.

Why am I saying this? Actually, as mentioned by Miss CHAN Yuen-han earlier, some organizations find themselves in a difficult position when they wish to develop these so-called social enterprises, be it in the form of co-operatives or other forms. The social enterprises we find nowadays do not lack a certain scale of operation. For the co-operatives have existed in Hong Kong for a very long time. According to information from a recent paper by the Hong Kong Council of Social Service, there are altogether 48 NGOs engaging in 187 social enterprises projects of this kind. The service targets of these projects include single parents, new arrivals, the unemployed, low-income people and women. There is also a great diversity in the mode of operation such as babysitting, running small stores and tuck shops, car washing and escorting the sick on medical consultation, and so on. However, what are the problems they face?

In the beginning they need assistance from other people to set up a so-called seed fund. Other than this, they also face many other problems. First, if the co-operative model is chosen, the people involved may find themselves in a rather embarrassing position in terms of their identity. This is because the existing Co-operative Societies Ordinance is a very outdated piece of

legislation. It is originally meant for use in the agriculture and fisheries sector. But it is now used to help the disadvantaged groups set up social enterprises in the form of co-operatives. This is not at all appropriate indeed.

Why am I saying this? For example, apart from the fact which Miss CHAN Yuen-han has mentioned, that there should be 10 people before a co-operative can do business, there are also many other problems. How can someone take out an insurance policy for a co-operative? With respect to MPF, who is considered as the employer and who is the employee? The spirit of forming a co-operative is to enable people to work there as owners, not employees. What should people do when faced with these problems? There are problems in the application for a business licence. For example, a co-operative wants to run a tuck shop in a university to sell ice cream, when the people apply for a licence from the Food and Environmental Hygiene Department, the officials there will ask them if they have got a business registration. If they do not, then no licence can be issued to them. So the co-operatives have to face a lot of difficulties.

Some co-operatives would help those single parents who receive Comprehensive Social Security Assistance (CSSA). When these single parents who are on CSSA work in a co-operative, would their working hours be counted? Then how should working hours in a co-operative be defined? The spirit of forming a co-operative is to enable its members to make commitments of various degrees in different positions. The respective earning power of the members does not matter so much. The thing that matters most is people will co-operate and the profits earned will be shared in more or less equal shares.

In a co-operative, there are some positions which may not be offering services in the front line, such as when some members are in charge of administrative or internal duties. However, some staff of the Social Welfare Department say that these do not count as work. Hence there would be very different ways in calculating the CSSA payments they are given. In view of this, work done by various Policy Bureaux and departments should match with each other.

When we talk about social enterprises, the thing that should be given most consideration is their abilities to survive for a long time, that is, their sustainability. If we set aside \$150 million and if we just let these social enterprises struggle for survival in the market, they may close down after two or

three years when they cannot survive on their own. Then this is actually a big waste of public money. How then can these social enterprises become sustainable? We can see that there are many policies in other countries such as their governments will give some special consideration to these social enterprises when outsourcing is contemplated. Some services would be outsourced exclusively to these social enterprises or non-profit-making organizations. Or some favours would be given to them in terms of venue or certain services offered to them. For example, many of these organizations want to apply for shop premises from the Housing Department, but the officers of the Housing Department will ask them what they are. As co-operatives are not charities, their applications are rejected.

Even when it comes to outsourcing, the Government now has adopted an approach of cost-effectiveness and commercial values. What the Government wants is, of course, inexpensive prices. It can almost be asserted that in many of the outsourcing services, the contract will go to the bidder offering the lowest price. If this principle is adopted, these social enterprises may not be able to compete with other business organizations on this premise. If the contract does not have to be awarded to the bidder offering the lowest price but some favours are extended to these social enterprises, the Government may worry that unfairness may result. The business sector may worry that this move may mean favour for the social enterprises and hence discrimination for the business firms. All these problems have to be considered carefully and the related policy must be clear and transparent. I have yet to see adequate discussions on this issue, nor any policy on it. As for law, as I have just said, the existing Co-operative Societies Ordinance is totally obsolete, so what should be done to upgrade it to suit the present-day needs?

Apart from all these, even if we let the social enterprises compete on an equal footing with the business sector, when the Government or the public sector outsources its services, could some social factors be considered other than cost-effectiveness and awarding the contract to the bidder with the lowest price? The reason for doing so is not just for the benefit of these social enterprises. When the Government outsources its services, if some social factors can be considered, the consideration made may not necessarily be unequal, but the outsourcing procedure would still be equitable and open, even though considerations are not based purely on commercial principles. This is actually done in some foreign countries and there are many such successful examples too.

Therefore, we very much hope that the social enterprises we see now are much more than a slogan and a sum of \$150 million. We hope that there are close links between the discussions, policies and the law concerned, otherwise, the social enterprises may not be able to give full play to its role in poverty alleviation.

With these remarks, President, I support the motion.

MR FREDERICK FUNG (in Cantonese): President, "social enterprises" seems to be a new term in Hong Kong. But all along some companies or non-profit-making organizations in Hong Kong have been running in the mode of social enterprises. For example, some subsidiary enterprises set up by some business organizations are operating some centres for the elderly or the youth with the aim of fulfilling corporate responsibility to the community. There are also self-help organizations formed by some NGOs with the aim of providing jobs for the disadvantaged, enhancing their self-confidence and capabilities. The target groups are the low-skilled workers, people with disabilities and the single-parent families.

According to statistics from the Unit for Third Sector Studies at The Hong Kong Polytechnic University, there are 48 NGOs in Hong Kong which run a total of 187 social enterprises in the forms of social enterprises, co-operatives or community development projects. Of these 30% belong to the manufacturing and retail trades, another 30% belong to household services, 10% are cleaning services and 10% are catering services.

Overseas experience shows that the social enterprises can integrate social and business objectives and allow the disadvantaged to learn from the real-work environment. Hence their capabilities and self-confidence are enhanced, and they can rejoin the labour market later. At the same time, more innovative goods and services can be offered to the public, benefiting both society and the beneficiaries alike. However, as social enterprises should strike a balance between making profits and achieving social objectives, there should be professional support and expertise in many aspects as well as public support before these social enterprises can be successful. In January this year, the Hong Kong Council of Social Service conducted a survey in which 33 social enterprises were interviewed. The findings show that 70% of the interviewees thought that there was insufficient public understanding of social enterprises.

President, I wish to declare to you that I am the chairman of the ADPL Social Service Centre Limited. In 2002, it set up the ADPL Sam Hong Workers Employment Support Centre which is the first social enterprise formed by the ADPL Social Service Centre Limited. The ADPL Sam Hong Workers Employment Support Centre operates in a self-financing and non-profit-making mode. The masters in the "sam hong" trades, that is, the plastering, painting and carpentry trades would undertake contract works projects and provide jobs for the "sam hong" workers. The profits made would be used to assist in the employment of "sam hong" workers. I would like to use the following example to tell the Government how difficult it is to run a social enterprise. Now the sales turnover of this company is some \$100,000 a month and about \$1.5 million to \$2 million a year. In total six full-time and some 40 part-time "sam hong" workers are hired. All of them are CSSA cases referred by the Social Welfare Department.

Currently, the ADPL Sam Hong Workers Employment Support Centre is facing three problems. The first one is insufficiency in liquid capital. With insufficient start-up funds, when the company is successful in bidding a works project tender, it has to pay money to workers to cover the wage expenses first for reimbursement later. This is because it will be only three to six months after the works project is complete that the company which has invited tenders will pay us. In other words, the more jobs we get or the more contracts we get, the more workers will be hired and the difficulties we face will be greater. It is more likely that our company will close down. We have discussed the problem with the banks to see whether or not they can advance some low-interest or interest-free loans to help us in our work in running social enterprises. But, to date, we have yet to receive a positive reply from a bank.

The second difficulty is that our company has also hired some management staff and professionals to ensure quality in the works undertaken by the "sam hong" workers and to provide training and counselling to them. Such work is not done normally by commercial corporations. However, social enterprises like ours would do this kind of extra work which is not commercial in nature. However, the costs of hiring these professionals and works supervisors are also high.

The third difficulty is that we cannot get any outsourced government works projects. There are actually many restrictions on the outsourced government works. We have discussed the matter with the Housing

Department. We are told that if our company wishes to be included in the list of contractors of the Housing Department, we must have five years' experience and we must pay a deposit of \$1.5 million. We must also have accumulated experience in completing a specific value of works projects, for example, after completing a works project worth \$10 million, we can be put on the list of contractors. Then we can bid for tenders from the Housing Department. Conversely, we have got more encouragement and help from the private companies. For example, the Hong Kong Housing Society, the Hong Yip Service Company Limited of the Sun Hung Kai Group and the Well Born Real Estate Management Limited of Henderson Holdings have put our company on their list of contractors so that we can bid for some minor works in the housing estates managed by their estate management companies. The above three problems are in fact very difficult to solve and they are serious problems. I hope the Government can realize the hardships which social enterprises face.

Actually, in the Budget of 2001, the Government set aside a sum of \$50 million for application by NGOs as the start-up non-operational expenses and the operational expenses for the first year of business operation. A maximum funding of \$2 million would be given for each item of business. However, this programme is only aimed at providing jobs for the disabled and attracting NGOs to shift from operating in the form of shelter workshops to social enterprises. Therefore, I hope the Government can expand the service targets of this programme from the disabled people to social enterprises and provide seed money for them. I would also suggest that the Government should set up a one-stop social enterprises support services centre to gauge the needs of social enterprises. Such a centre can be modelled on the support services presently offered to the small and medium enterprises (SMEs). The one-stop centre can provide support, training and consultancy services to the social enterprises. It can also engage in promotion, lobbying and encouragement work in the business sector so that support and participation can be secured.

In addition, the Government may offer rent remission to the social enterprises. It can make good use of the existing resources to provide premises like those which have been left vacant for many years in the markets or shopping malls of the housing estates for lease by the social enterprises or for use in publicity efforts or start-up operations. Besides, the Government can also conduct a review of the government procurement policy and promote among government departments and public organizations the award of more service contracts to such enterprises. The British Government, for example, has

official guidelines to incorporate social enterprises into its procurement procedures.

Of course, when giving concessions and exemptions to these social enterprises, what I am worried and the Government would be more worried, is the possibility that this would constitute unfair competition to the SMEs. So the above proposed measures should not be adopted to protect the social enterprises but to create a level playing field for the social enterprises based on their special objectives. This will enable social enterprises to start on a platform where they can enter a competitive world of business.

In fact, there are many examples overseas which illustrate that it is important for various sectors to render support to the social enterprises. The Department of Trade and Industry in Britain set up a Social Enterprise Unit in 2001 and social enterprises are offered tax concessions. In the United States, social enterprises are given tax allowances and substantial support from the business sector. According to a survey conducted in 2003 in which 150 social enterprises of 72 NGOs were interviewed, close to 30% of the large NGOs obtained start-up loans from the business sector and close to 70% of the small NGOs got subsidies from funds set up by the business sector. At the same time, famous universities like Harvard and Yale also offered management programmes for people aspiring to work in social enterprises.

As social enterprises can provide vocational training and job opportunities for the disadvantaged, the Taiwanese Government has also put in great efforts to promote the development of social enterprises. In 2002, Taiwan drew up a set of regulations on setting up shelter workshops for the mentally and physically disabled and on incentives and assistance. These serve to provide facilities and equipment, rentals, furnishing expenses, staff costs and administrative costs to social enterprises which run shelter workshops for the disabled. In addition, the Taiwanese Government also grants certain social enterprises the special right to use a lot of land and to offer subsidies for the staff costs of hiring professionals in the social enterprises.

From all these examples, it is evident that to make social enterprises a success, there should be two directions and the Government must consider them. First, the disadvantaged groups should be helped to go into the competitive market, start their operation using business practices, then strive to become self-reliant and earn a living for themselves and their families. In achieving

these objectives, they should get help from the Government. In the examples listed by me just now, a variety of methods are used, including offering government outsourcing contracts to the disadvantaged groups for competitive bidding among the social enterprises. Venues should be provided to social enterprises at inexpensive rents. Seed money should be provided to the social enterprises so that they can have money to start up their business. Tax concession should be offered as well. Then when these social enterprises grow into maturity, the abovementioned methods can then be phased out and the social enterprises can compete with other business enterprises in the market.

Second, during the start-up stages of the social enterprises, often there needs to be some kind of intermediary organizations. Currently such intermediaries in Hong Kong are mostly social work organizations. But that does not mean that social work organizations are the only kind of intermediaries for social enterprises. Actually, such intermediaries may include professional bodies like those for lawyers, town planners and architects. They can also promote social enterprises or even set up some of them. Private firms can likewise lend a helping hand and do the same. There are many such examples in foreign countries where social enterprises are set up by private companies. Why should the words "break away from the confines of the pure social work sector" be deleted from Mrs Sophie LEUNG's motion? The reason is, I would venture to think, such wording would imply queries about the practice of the social work organizations. If these words are left out, it would imply that any mode of operation would do. Actually, any mode will do. But we need to have some kind of intermediary organization and this can be social work organizations, professional bodies or private enterprises or even a combination of these three. All in all, in such circumstances, we can promote social enterprises better so that more unemployed people can get a job. Thank you, President.

MR ALBERT HO (in Cantonese): Madam President, the Democratic Party supports the motion moved by Mrs Sophie LEUNG entitled "Vigorously promoting the development of social enterprises". The main reason for which I have proposed my amendment is very simple. I only wish to delete the words "break away from the confines of the pure social work sector". The social enterprises we see today have in fact broken away from such confines since a long time ago and many of them are operating on commercial practices very successfully. They are operating with assistance from the Government.

Madam President, in recent months the CoP has initiated discussions on social enterprises. At first, we may think that these social enterprises are of course related to assistance given to the disadvantaged. I hope Members can note that social enterprises can become a means and an instrument promoting different social values. The advantage is that something can be done to redeploy social resources of enterprises, especially those in the business sector, to meet the needs of other social strata without raising taxes or public expenditure. Conceptually, this is actually the third path other than a so-called totally free economy and a social security or welfare system. Over the past seven years, Hong Kong has undergone economic restructuring and there was a surge in the number of the unemployed. We can see that many changes of a structural nature have taken place in the community. It follows that policies embracing greater flexibility and new thinking should be formulated to help not only the disadvantaged in society but all those who are in need. They should be helped to free themselves from poverty, become self-reliant and can in turn even help other people in need. This will result in self-reliance and sustainable development. The Democratic Party therefore hopes that the authorities can promote the development of social enterprises and canvass support from the statutory bodies and the business sector to take part in this movement to promote social enterprises.

Let me talk about the responsibilities of the Government in this respect. First of all, the Government and its organs as well as many statutory bodies control many public resources in Hong Kong. It follows that the Government has the responsibility to formulate policies to promote or assist in the development of social enterprises. We can see, for example, that many of these statutory bodies manage quite a number of properties including shop premises. These statutory bodies are willing to lease their shop premises at very affordable prices to some charities. We think this practice should be expanded to include social enterprises and such premises can be leased to them at affordable prices. The Government should encourage statutory bodies to exercise their discretionary powers when tenders are invited. They should make decisions which are more favourable to the social enterprises and even accord priorities to them.

Owing to the fact that convenience stores in university campuses, hospitals and government office buildings enjoy a good business environment, many social enterprises are interested in doing such business. When the statutory bodies invite tenders, often they do not take into account the special nature of the social

enterprises and little is done to exercise the discretionary powers vested in them by law to give special or even priority consideration to the social enterprises in helping them develop. We are convinced that the reason for this is the business sector's insistence on the so-called principle of commercial rivalry. It is thought that everyone should be treated the same and this explains why the unique qualities or the social values of social enterprises are disregarded and even discarded.

Some time ago a welfare organization called the Rehabilitation Alliance Hong Kong has accused the authorities publicly of not showing any compassion. In 1994 the Alliance won the tender for the right to operate a convenience store in Queen Elizabeth Hospital and profits were subsequently made. Unfortunately, a year ago the Hospital Authority invited public tenders for the convenience store and the contract was awarded to a convenience store chain at a price 10 times higher than the previous one. It was a most disheartening incident.

Many of these social enterprises have a mission of their own. It may be the achievement of some social objectives or the creation of jobs for the disadvantaged groups or those who are in need of assistance or temporary assistance. The people receiving assistance may then develop their potentials and gain working experience. They may become self-reliant and prove to society that they can make contribution and develop in a sustainable and independent manner. The Government and the statutory bodies should be proactive in offering assistance to these social enterprises and take pleasure in seeing their success. Therefore, we wish to stress once again that we hope to see more diversified and flexible measures from the Government to encourage the departments and the statutory bodies to set up a system in tender exercises for outsourcing contracts so that the social enterprises can be given some advantage in consideration. And in the vetting of tenders, discretionary powers should be exercised as appropriate to help the social enterprises.

With respect to the amendment proposed by Miss CHAN Yuen-han, we agree to it in principle, that is, in spirit. This is because she is making similar suggestions to the Government with the objectives I have just mentioned in mind. In fact, we know that in the outsourcing contracts for some work types such as those of a labour-intensive nature like cleaning or courier services, some priority or considerations advantageous to the social enterprises are given. Of course, as we have said, there are some problems in this. First, is there any room for

improvement in this practice? Can assistance more to their advantage be given? Can discretionary powers be exercised more flexibly? All these are matters of concern to us. However, Miss CHAN Yuen-han mentions in her amendment that this practice should include all outsourcing contracts. We are a bit worried that, phrased in this way, the amendment would be taken to mean all other kinds of outsourcing contracts such as those about information technology or construction and these contracts are strictly stipulated in the World Trade Organization agreement that fair competition must be enforced. As Miss CHAN Yuen-han's amendment does not have a fine distinction on this, so owing to this reason, we will abstain from voting. Despite our understanding of her intention, the way she phrases her amendment is not entirely acceptable to us.

We suggest that a platform for dialogue should be built so that social enterprises can maintain frequent and multi-faceted contact with the Government and the business sector. Such contacts would help social enterprises gain more experience. When this is added to their own innovation and new thinking, they may develop flexible practices or a mode of operation that will best suit them in particular and social enterprises in general. Hence they can manage their own finance and become self-financing and self-reliant.

Of the dozens of social enterprises in Hong Kong, quite a number of them have a certain degree of market sensitivity and operational experience. But as we can see, these social enterprises still wither in large numbers. We therefore hope that the business sector, the community and even government departments can share their experience with them and give them advice through some suitable platform. This will ensure that their development can be sustained. There are of course many examples of social enterprises which are successful, such as the Personal Emergency Link Service which is a good support and service to the elderly; then there is the Hong Kong Stewards Limited which has introduced social enterprises into the tuck shops in schools and many of them are operating well. We hope that social enterprises can collaborate with the Government and the business sector and thus produce a win-win situation for all the three parties concerned.

MR WONG KWOK-HING (in Cantonese): Madam President, it has become more and more difficult for the grass-roots workers to secure a job. Jobs for the grassroots, middle-aged or young, of all trades and industries are diminishing. The young ones are mostly employed in freight transport, retail or sales jobs; the

older ones are confined to jobs in Chinese restaurants, cleaning and security services.

It is impossible for a petit citizen to start a small business. In the past, it was easier to start up with a small shop, expanding it into a larger operation. You could support a family even by selling goods at street sides or "under the staircases". The urbanization of Hong Kong has made small business operations impossible.

Today, urban planning is done by property developers, amongst which include the MTR and KCR developments. The design of these developments is across the board all the same. All are residential complexes and shopping malls; and shop units in these large shopping malls are all operated by local or international chained operations. Petit citizens have no way to compete; and small business operations in these large shopping malls are absolutely not viable. Moreover, public transport terminals and housing estates passageways are all by design directing people flows towards shopping malls. It would be very difficult for small shops outside shopping malls to attract people traffic.

Large enterprises also monopolize service industries like cleaning and security. For example, property developers are undertaking packaged services of property management, cleaning and security. Cleaning and security services outsourced by the Government are inevitably taken up by the several large contractors. Small bidders are never considered.

In view of such monopolization by large enterprises, coupled with the problem of structural unemployment, grass-roots workers have no way in securing an employment. Many years ago, the proposition of co-operatives was raised. A few co-operatives were established by the unemployed with the assistance of NGOs. The results have been positive. Co-operatives are one form of social enterprise. Miss CHAN Yuen-han has just talked about this. I shall not repeat it here.

In recent years, the discussion on social enterprises has heated up. Many are advocating the development of social enterprises in Hong Kong. We must, however, first understand the differences between social enterprises and private enterprises. The major objective of private enterprises is profit-making. Employers aim at maximizing profits, and pocketing them. To achieve such an

objective, benefits to society are often sacrificed. For example, along the production process little attention is paid to environmental pollution, to the question of basic protection of workers' living, or to the possible elimination of a community or a community culture.

In order to achieve the maximum return, private enterprises will try the utmost to exploit workers. Government service contractors often withhold employee's wages and vacation or fail to make MPF contributions. The objective of social enterprises is not maximizing profits. They seek to, whilst getting a profitable return, also look after workers' job opportunities and occupational safety, as well as promoting community health and its harmonious development and cultural conservation. Therefore, the discussion on promoting the development of social enterprise today should not be confined to resolving the problems of the unemployed. We should take a broader perspective and look at the social and economic benefits of social enterprise.

Madam President, today all the four amendments involve the deletion from the original motion of the clause "break away from the confines of the pure social work sector". Social enterprises and the social work sector are closely related, for only the social work sector is prepared to commit human and other resources to establishing and developing social enterprises, affording them better prospects. The clause "break away from the confines of the pure social work sector" in the original motion, however, warrants special attention. It implies dissatisfaction with the way in which the social work sector handles social enterprises, as a result of which the principles of commercial operations are not observed. Nevertheless, as I have just talked about the characteristics of social enterprises, social enterprises are totally different from those pure commercial operations. If the commercial sector wishes to promote social enterprises, it should understand their fundamental nature. Do not think that applying inappropriately the principles of commercial operation to an enterprise operated by self-reliant workers would make it a social enterprise.

There is indeed room for development for social enterprises in Hong Kong. However, the Government must give the green light and allow social enterprises to take part in, and have priority in, government outsourced contracts. Government officials should not think that this would complicate the processes and procedures. Experiences actually tell us that contracting out cleaning and security services to large contractors are causing more problems. We have received complaints this day or the other for requests to meet with government

officials to mediate in or to resolve problems of employers withholding wages or vacation, or failing to make MPF contributions. This has involved more effort of and has caused more troubles to government officials. Why then, should the Government not consider awarding contracts to social enterprises with priority?

Just now I heard Mr Albert HO say that the Democratic Party would not support Miss CHAN Yuen-han's proposed amendment of giving priority to social enterprises. I pledge Mr HO not to misunderstand the purpose of Miss CHAN Yuen-han's proposed amendment. If the Government does not give social enterprises priority in government outsourced contracts, it will not be able to provide assistance to more of the unemployed *(The buzzer sounded)*

PRESIDENT (in Cantonese): The time is up. Please be seated.

MS LI FUNG-YING (in Cantonese): Madam President, the motion today discusses the development of social enterprises. The Commission on Poverty (CoP) chaired by the Financial Secretary discussed this subject very extensively at the end of last year. As a business operation with an objective of community service, a social enterprise operates under commercial principles whilst serving society. I believe all will support this ideal of creating a channel of joint venture between the Government and the people in serving the community. However, how should we look at social enterprises when their development has progressed to the realistic phase of implementation? There will be major differences in opinions, just as we have discovered in today's various amendments.

I believe it is impossible to promote social enterprises in Hong Kong, and to make them a success, without the participation of the Government. However, the impression that I have gained from the relevant discussions of the CoP is that the Government would rather not be involved. The Financial Secretary will no doubt argue that the Government has implemented the Enhancing Employment of People with Disabilities through Small Enterprise Project, that is, the seed money project, as well as the partnership programme of the Community Investment and Inclusion Fund. These are programmes supported by the public coffers. Why then should we say that the Government wishes to stay not involved? It is that the Government has considered that, having provided funds for these projects, it has discharged its responsibility of promoting social

enterprises. The first provision of capital for the establishment of a social enterprise is of course important. More important is the establishment of an environment facilitating the operation of a social enterprise. The Government has always stressed its wish to create an environment conducive to business operation. We have yet to hear from it any statement that it will create an environment conducive to the development of social enterprises.

Madam President, amongst today's amendments, many have suggested the Government to create an environment conducive to the operation of social enterprises. I support these proposals in principle. Today, the employment market has a serious problem of polarization. Whilst high-skilled people enjoy full employment, low-skilled workers are suffering from serious unemployment. I shall move a motion in the latter part of this month for a debate on this subject. However, since the discussion today touches upon social enterprises, I consider that the question of how social enterprises can help the employment of low-skilled workers should be one of the directions for its development.

As for now, we consider the support seriously inadequate. Take the Enhancing Employment of People with Disabilities through Small Enterprise Project as an example. It requires an applicant organization to have half of its salaried employees to be people with disabilities. This ratio has been relaxed from 60% when the project was first implemented. However, if an NGO does not embrace serving the disabled as its objective, it will not be able to benefit from the seed money project. I do not wish to request here for a further reduction of the ratio for the employment of disabled persons, for I do not wish a disadvantaged group to be sacrificed for the sake of another. The alternative is for the Government to set up another seed money programme for the low-skilled workers, to assist them to re-enter society.

Madam President, social enterprise is a business of conscience. The logic of requiring a conscience programme to operate according to the law of the jungle practised in the commercial market is one entwined with great contradictions. Exactly because of this, when we talk about the development of social enterprises, we must think about providing the soil suitable for them. This is a reality that we must face. Funding is of course important, but it is only the starting point for the Government. The Government plays a key role in seeing to the blossoming and growth of social enterprises. This is its responsibility.

Madam President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): President, the society we have in reality is a capitalist society. The economic model of our society not only places emphasis on free economy. Under the concept of free economy there prevail some phenomena, and very cruel ones they are, that include such characteristics of capitalism as the law of the jungle and big fish eating small ones.

President, why should I point out these characteristics? Today when we talk about social enterprises, we know that social enterprises are not operations that people normally refer to, nor a problem that you can resolve if you know how to conduct a business. In a society where the law of the jungle prevails, may you be very skilful and experienced in conducting a business, there is nothing that you can do if a consortium fixes its eye on your trade and considers it a development opportunity.

As we have witnessed, many small business retailers, for example, fruit and vegetable grocers, will not be able to survive when a consortium identifies the development opportunity and comes in with a rent offer higher than the fair market rate for their shop units. This is where the problem lies.

As to the subject of social enterprises that we are discussing today, just as other Members have pointed out, if the Government's attitude is only to allocate money as a form of support, and not to look at the other issues, the provision will eventually be wasted. Why? When a large enterprise sees a developing trade and considers that there is room for its own development, it will join in the competition. All the investment and effort committed will then be washed down the drain.

As we talk about the subject of social enterprise, we must make the Government understand one thing: What are social enterprises? Social enterprises are not like the other enterprises. There is a specific purpose in them. Since there is a specific purpose, the Government should not deal with them in the normal way. I am very worried that the Government will treat them as ordinary enterprises, taking an approach that is adopted from the '60s, '70s, '80s and the millennium. That is positive non-intervention, in the name of free competition. Under this policy of so-called positive non-intervention, all will be decided by free competition. There will be no helping hands. How can social enterprises compete? They are not lacking in personnel and experience, but they certainly do not have the other capabilities to compete with large consortia. They will only come to a dead end.

Therefore, we wish today the Government would adopt a liberal thinking. While giving recognition to social enterprises, the Government must also recognize its social purpose, which is looking after the disadvantaged, not only the unemployed citizens, but also those who have difficulties in securing employment and those partially unemployed, and help them to find opportunities of becoming self-reliant, so that they do not have to rely on society and become a burden. Since there is such a social mission and purpose in social enterprises, the Government should adopt for it a special policy, rather than only allocating money in the usual way as it always has done. That will not work.

Just now some colleagues talked about a lot of examples. "The Emergency Alarm System for Elderly Persons" is a success, for example. There are others not quite belonging to social enterprises but have worked well, like the retraining board. If I remember it correctly, it has worked for nearly 10 years, and it can continue development in the years to come. It operated under the Government's protection net in the early days, shielded from infiltration of other organizations or consortia, before it has slowly developed and managed to stand on its own. From examples like this, we would know how large the Government's protection net needs be. If any weaker it is, it will fail to work.

If the Government wishes to put social enterprises in proper recognition, it should consider building for them a protection wall. The thickness of this wall depends on the strength the Government is prepared to exert. Doing it perfunctorily will not serve any purpose. I wish the Government could provide some sturdy protection. Policy support is very important, as pointed out by other colleagues before me. There is a lot of policy support in this respect in other countries. This is one area that I wish the Government would do. Financial support is another area. There have been financial provisions from the Government, but I wish the Government could do more and commit more resources to it. If this could be done, the wall would be stronger, and the help it could provide, more.

Experiences in the United Kingdom, Australia and Denmark tell us that social enterprises can be developed. They are full of life, creative and flexible in operation. Social enterprises involve the participation of all kinds of organizations and associations. There are differing missions and different scales of activities, so beneficiaries vary and funding has come from all sources. The success of social enterprises in these countries is due not only to the financial support from their governments. As I have said, their governments provide also policy support and administrative assistance, including tax concessions to

help social enterprises function. It would be better, if as advocated by other colleagues before me, there could also be a policy of priority in government tenders.

As I have pointed out, the retraining board has managed to do well because it does not have to face competition. I wish the Government would do the few things mentioned by me. I would have to say, that the Government must not let our hopes go down the stream by adopting the economic model of positive non-intervention. President, I so submit.

MR TOMMY CHEUNG (in Cantonese): Madam President, for the term of social enterprise, our subject of discussion today, there is not yet an acknowledged definition in the academia. Social enterprise may exist in many forms. It may take the form of a co-operative, a business joint venture, or a joint-stock company. However, if we break down the term to look at its meaning, it would mean "social purpose" and "commercial enterprise". If we do not talk about self-financing, it will then become pure social welfare, and will not be able to achieve the original purpose of helping people to become self-reliant.

Many friends in the commercial sector will find it a bounden duty to participate in the attempt to establish enterprises that embrace social purposes, using their expertise to help them survive and prosper, to help the disadvantaged to be employed and self-reliant, whilst at the same time achieving the objectives of serving the disadvantaged groups, social integration, building up social capital and helping community development.

As a start, the commercial sector can certainly contribute its business wisdom. For example, it is plausible to establish a "mentorship programme" with social enterprises, so that practical experience in commercial activities can be shared with people who are interested in starting a social enterprise.

As a matter of fact, a local academic has once pointed out that social enterprises in Hong Kong have met many difficulties because they do not have commercial background in their management or they lack the participation of managers who have had commercial training. The Government should therefore establish more platforms to allow wider participation of the commercial sector in order to promote the development of social enterprises, enabling them to blossom and prosper.

Apart from business strategy and talents, financing is always a problem for social enterprises. The Sunderland Home Care Associates, an internationally renowned social enterprise in England, had had difficulties in financing in their early days. It took them two years to secure the necessary capital.

The predecessor of the Sunderland Home Care Associates was a co-operative called "Little Women". Its executive director, Margaret ELLIOT, was 30 years ago a low-income person in Sunderland, a small city in Northeast England, who lived on her husband's monthly income of £160 (approximately \$2,000). She was inspired by the co-operative in which her husband participated and hoped to establish a co-operative, that is, "Little Women", together with six friends to deal in home care business. However, as they were all from the grassroots, the bank was reluctant in approving the loan. It was two years later when the husbands of the seven ladies came forward as guarantors, as required by the bank, that the loan to Little Women became available.

Social enterprises like this do not have past performance to show, and they do not have any collaterals to offer. They will therefore have problems in putting up a convincing proposal or a viable plan. Coupled with the fact that the trade they undertake will normally be unique, it will be difficult for them to win the trust of the bank in order to secure a loan. We certainly do not wish Hong Kong's social enterprises to run into difficulties like "Little Women" did, to be left out in the cold without help when it comes to financing.

Upon implementation of the project of Enhancing Employment of People with Disabilities through Small Enterprises, the Government has established a \$50 million seed fund, for which social enterprises may apply. However, the project requires the applicants to be charitable NGOs. If a social enterprise does not belong to any conventional NGO, or if it is owned by employees in the form of a joint-stock company, it will not be eligible for the fund. Moreover, the Project further requires the applicant social enterprise to employ disabled persons not less than 60% of its total salaried employees. Whilst it helps specifically the disabled, it restricts the operational flexibility of the aided social enterprises.

Therefore, we need to provide more convenient financing channels for social enterprises, for example, encouraging the commercial sector to jointly set

up seed funds with the Government, and to provide more flexibility whereby potential social enterprises can have sufficient start-up capital for development.

Experiences in other countries have proved that social enterprises can achieve great results in enhancing employment of the disadvantaged, rejuvenating communities and integrating ethnic minority groups. We hope social enterprises in Hong Kong can achieve the same remarkable results and sustainable development.

With these remarks, Madam President, I support Mrs Sophia LEUNG's original motion.

MS AUDREY EU (in Cantonese): President, the subject we discuss today is social enterprises. As pointed out by Mr Tommy CHEUNG just now, social enterprises have a long history, and they are well documented and there are many examples in other countries. In Hong Kong however, it is a relative new term. As pointed out by Mr Tommy CHEUNG, although the term has a long history, there is still not yet an acknowledged definition for it.

From the speeches of colleagues, I discover that some of them have deviated from the premise of social enterprises. Some have turned to the subject of monopolization by large consortia, and the conflicts with small consortia and small enterprises. We should really clearly understand the meaning of social enterprises. What are social enterprises? What policy will promote social enterprises? What role should the Government play? There are differences in opinion here.

Simply put, a social enterprise comprises two things. The first is commercial activities. Social welfare is the second. We can take a look at the leaflet published by the Hong Kong Council of Social Service at the beginning of the year. Included in it is a directory of the services provide by social enterprises. It is very useful. The directory mentions social mission and enterprise strategy. It means a social enterprise should integrate these two things. Simply put, a social enterprise will have to have a social mission and also, social capital. We will know the nature of those organizations from their names listed in the directory, including the Mental Health Association of Hong Kong, the Fu Hong Society and organizations related to the Down's syndrome.

We all agree that the public sector should provide policy concessions to social enterprises, for example, seed money loans or tax concessions. However, since social enterprises are involved in providing commercial services, there will inevitably be direct competition with other middle or small enterprises. It is therefore very important to draw a circle to define social enterprise, one which the Government or other sectors should provide assistance.

We must know which type of enterprises belongs to social enterprises, and which type deserve assistance. We may consider the social mission of such enterprises, for example, promoting fair trade, aiding the poor, helping the unemployed, promoting environmental protection, promoting organic food, providing employment to the disadvantaged and strengthening neighbourhood network. How should we define commercial activities carried out in pursuance of these missions?

Furthermore, many discussions lead to a point that deserves our attention: these so-called social enterprises may not necessarily be making a profit, but they should have an earned-income. Most of the time, this earned-income has to be looked at in the context of social missions. Let us take a simple example to illustrate this. A restaurant operated by a group of disabled persons may incur a loss in that the money they generate from the business is less than the Comprehensive Social Security Assistance (CSSA) paid to them. Under such circumstances, we still consider this social enterprise worthy of its existence. Also, it has an earned-income.

However, social enterprises are still at the budding stage in Hong Kong. Most enterprises are small-scale operations run by NGOs, or are programmes under social welfare organizations. They cannot be compared to those in other countries, both in terms of number and scale. They are less known in Hong Kong too.

I wish to point out today that, apart from the assistance from commercial sector and the Government, consumers play a role too. President, you should be interested in the subject that I will be talking about: recycled paper — I remember the President was once interested in the subject and asked me about it during the last election campaign. A green organization, the Power of Consumers, has procured some quantity of 100% environmentally-friendly paper — made from recycled paper and available for larger orders, to take the place of snow-white photocopy paper and help reduce felling of trees. Stationery in my

office, letterheads, envelopes and business cards, is all ordered from them. The paper may be somewhat yellowish, but it is beautiful in its own way. President, we have used this recycled paper to print some very beautiful leaflets for the 1 July march. The colour tends to be yellowish, but the tone is extremely beautiful. Therefore, President, there is something more than that the Government and the commercial sector can do. It has to do with the consumers too.

President, let me come back to the question of assistance from the commercial sector, training and publicity, and as raised by other colleagues today, the question of providing special concessions to social enterprises, for example preferential treatment in tendering exercises or tax concessions. President, I agree to all of these proposals. After discussion with my colleagues from the Civic Party, we consider that following this route we will be able to reduce the wealth gap. On the whole, it will promote public interest, as it will reduce expenditure on social welfare and CSSA. However, we (including the commercial sector, the Government and other organizations) will have to sit down for a very careful discussion, in coming to an appropriate definition. Or else we will be doing a disservice out of good intentions, adversely affecting other small and medium enterprises whilst helping a selected group. We must have a common understanding as to under what circumstances assistance to what social enterprises should be provided.

President, the Civic Party supports the original motion and all the amendments, and wishes the Government could actively discuss and study with the commercial sector, Members of this Council and other organizations involved in such activities for the best way to promote social enterprises in Hong Kong.

Thank you, President.

MR LEE CHEUK-YAN (in Cantonese): The motion topic today talks about "vigorously promoting" the development of social enterprises. Members all claim that they support the idea and I believe the Secretary will also say so. Only that there are bound to be different interpretations of "vigorously". I am of the view that the development of social enterprises is worth promoting. As Members know, the idea of social enterprises is to provide assistance to the unemployed or disadvantaged groups in society. It is hoped that they can thus

be provided with job opportunities to develop their talents. And, the aim of developing social enterprises is not profit-oriented. I believe, with this definition in mind, Members will all wish to promote the development of social enterprises. But how should we interpret "vigorously"? In this regard, there are three significant factors to consider.

The first factor concerns whether or not there is a legal framework for such development. This is something the Government refuses to do. Maybe, the Government can tell us whether it is willing to do so when it gives its reply later on. What is meant by a legal framework? As many Members have pointed out, the Co-operative Societies Ordinance is already outdated. In that case, can the objective be achieved simply by updating the Co-operative Societies Ordinance? Not necessarily. We may as well follow the example of the United Kingdom, where only community interest companies registered under the Companies (Audit, Investigations and Community Enterprise) Act 2004 are recognized as social enterprises, and where such enterprises may enjoy tax exemption once registered. Currently, co-operatives in Hong Kong are not entitled to tax exemption, so if the revenue of a co-operative in any year or month exceeds the limit, albeit marginally, it will have to pay taxes. If Members really agree that social enterprises can promote social well-being, can they tell me why co-operatives have to pay taxes? Therefore, tax exemption should be one of the arrangements. Besides, I do not agree, as argued by some Members just now, that there is no employer in a co-operative and one who runs a co-operative is thus a self-employed person. I do not think that one who runs a co-operative is the same as a self-employed person. The employer-employee relationship should still exist, and insurance can still be taken out. The only difference is that the company or enterprise concerned is a social enterprise. That being the case, will the Government formulate a legal framework for this?

I think the second very significant factor concerns this question: How much support will the Government offer? I know that the Government will surely refer to money later on. It will certainly claim that as much as \$150 million will be provided over a period of five years. But is money everything? Money is important, but it is not everything. In case many organizations want to establish social enterprises in the future and wish to obtain assistance and support from the Government, who should they turn to, may I ask? Are they supposed to approach the Financial Secretary on everything? Frankly speaking, we do not even know how long the Commission on Poverty (CoP) led by the Financial Secretary will last. In case the CoP is abolished one day, who will be

responsible for matters related to social enterprises? I want to know whether there is, or whether there will be, any specific government department to handle such matters. The Home Affairs Bureau? In case we encounter problems and want assistance, as when the Housing Department cannot allocate any venues, can we approach any relevant bureaux or departments, so that they can sort things out with all the other government departments for us? If everybody recognizes the importance of promoting social enterprises, there must be assistance and support at the central level. Only this can be called vigorous development.

I am afraid that when we encounter any problems in the future, the departments concerned will all evade responsibility, thus preventing us from achieving anything. In the end, we may fail to establish any social enterprises all the same. Therefore I hope that the Government can tell us later on at this meeting whether any specific department has been put in charge of this matter — I do not know for how much longer Mrs TSE will stay in her present post, because people are now talking about her promotion. Will any specific department, instead of any particular individual, be put in charge of this matter?

The third factor concerns the procurement policy. I do not think that it is enough to accord priority to social enterprises in procurement. And, there may also be a certain degree of risks. I do not think that it is enough to accord priority to them. Why is it impossible to specify that certain jobs must be assigned to social enterprises? In the case of hospital catering cited by a Member earlier, for example, it was suddenly assigned to a large corporation. The foods now sold in the tuck shops of many schools are supplied by large corporations and such foods may not be wholesome at all. Why is it impossible to require that all such businesses must be operated by social enterprises? Why is it impossible to restrict these businesses to social enterprises? If we can do so, we will be able to create opportunities for social enterprises, which is better than simply according priority to them. There is one intrinsic and very troublesome problem with according priority because the method of selection is invariably based on a points system. Commercial organizations can also claim themselves to be social enterprises and we cannot possibly stop them from doing so. If social enterprises are required to take on the unemployed, they must then do so. But the definition of unemployed people poses a separate problem. On one occasion, when discussing whether enterprises should accord priority to the unemployed, I engaged in some kind of a debate with Mrs TSE on the definition of unemployment. If enterprises can receive priority in the award of operating

rights simply by according priority to the unemployed, there may be a risk — their existing workers may lose their jobs. In the case of cleaning workers, for example, the existing employees of an enterprise may be working just fine, but then, because of the requirement of giving priority to the unemployed, the enterprise may dismiss the existing employees and take on some unemployed workers. What will ensue will be competition for jobs among the poor. I do not think that employment priority should be adopted as a criterion. Instead, it should be stated clearly that only social enterprises will be awarded operating rights. Besides, the whole thing should not be perceived as just a simple reallocation of work. Rather, new projects must be identified by all means to widen the room for the participation of social enterprises.

I hope that we can really succeed in promoting the development of social enterprises in these three respects. Finally, I wish to say a few words for Mrs Sophie LEUNG. Many people criticize her for advocating the separation of social enterprises from the social work sector. But her advocacy is in fact correct. Social workers simply should not undertake such work, simply should not engage themselves in social enterprises. On second thoughts, I have realized that her advocacy is correct. If any social workers want to engage themselves in social enterprises, they must free themselves from the mindset of social workers because their training has nothing to do with the work in this respect. Instead, I think another point is very important. People from all social sectors must come forth to offer more assistance. Such work should not be undertaken by social workers alone. Those in the business sector who have the relevant experience should all lend a helping hand. Only this can lead to success. Thank you, President.

MISS CHOY SO-YUK (in Cantonese): President, I do not know much about social enterprises and I have not looked into the whole system. However, recently, I visited Japan with my family members and I have some thoughts which I think should be expressed now.

I noticed a phenomenon in Japan that I had not noticed before, that is, there were a lot of people directing traffic in the streets. Turning from main streets into alleys, one would find two persons standing at the roadside. As one walked further, one would also find two persons standing at the vehicular entrance of each building directing traffic. In a walk of just over 10 minutes, one could find several dozen people directing traffic. I thought that if the same

could be found in Hong Kong, a lot of job opportunities would of course be created, and the traffic would not be that congested and perhaps the likelihood of traffic accidents would also be greatly reduced. When I told my nephew, who was travelling with me, my thoughts, he said that that if the Government hired 10 such people, an additional 20 persons might have to be hired within the Government to supervise these 10 persons, that is, if \$100 was spent to hire these people to direct the traffic, another \$1,000 might have to be spent on managing them. This is indeed likely and it was good of him to have thought of this. This kind of situation does exist in the bureaucratic structure of the Government.

Just now, many Honourable colleagues talked about co-operatives and social enterprises. It also occurred to me that if the Government could use some resources on co-operatives and let them hire this type of.....later on, I will also touch on many areas in which this type of manpower is required. Doing so will actually create an all-win situation: On the one hand, the Government can perhaps reduce the demands for CSSA and other social welfare assistance, and on the other, all people in the workforce can be self-reliant, so that they can have greater self-esteem and the general sense of well-being in society will also be greater. Moreover, in the absence of a bureaucratic structure, I believe that in many areas, the Government can — take directing traffic, which I have mentioned, as an example, the Transport Department can cut a lot of manpower in this area. In fact, there are also many areas in which the same thing can be done. The Government can outsource this kind of simple but labour-intensive work to co-operatives.

During the Question Time earlier, we talked about the illegal dumping of waste. The Environmental Protection Department (EPD) has to carry out several thousand inspections before prosecutions can be brought against some people, yet we are calling on the Government to step up inspections because this sort of illegal dumping is really a great nuisance to members of the public. If the EPD hires additional manpower, how many officials will have to be hired to manage the additional staff? This task is in fact very expensive. If the mode of co-operatives can be adopted and the Government can outsource these work processes to some other people to carry out the inspections, the EPD will be able to save money and members of the public can also have better services. Moreover, a large number of people will also be given job opportunities.

We often complain that iron cages are placed everywhere, however, the Food and Environmental Hygiene Department (FEHD) has so far refused to assume the responsibility of confiscating the iron cages placed in the streets at

will. If the Government hires companies similar to co-operatives, I believe it can recruit two times the manpower at half the costs currently incurred by the FEHD. The prosecution of litter bugs and smoky vehicles can also adopt a similar approach.

In fact, there is a lot of labour-intensive work, however, the bureaucratic structure does not permit us to employ so many people. If the development concept of social enterprises is adopted, then the buck of doing the tasks we ask of the Government will not be passed from department to another. On this problem of iron cages alone, a number of departments have shifted their responsibility to one another. The Lands Department said that it lacked sufficient manpower and the FEHD also said the same thing. Apart from making it easier to solve this sort of problems, more importantly, the Government has nothing to lose. On the contrary, it will save resources and society will also become more harmonious. Therefore, I hope the Government will give this serious consideration.

President, I so submit.

MRS SELINA CHOW (in Cantonese): President, after listening to the views expressed by a number of colleagues on this question, I find some of the views have slightly deviated from the question. Some colleagues have simply mixed the unfair phenomenon in society, as well as their objects of pursuit, with the question. Simply put, the development and concept of social enterprises, characterized by commercial enterprises, refer to the direct provision of commodities and services to the market, as Mrs Sophie LEUNG put it. However, the starting point of social enterprises is to pursue certain social objectives, including the creation of job opportunities, assisting the disadvantaged groups, and so on, but not to seek to increase profits, like enterprises in general and private organizations do. Although these enterprises do seek to make profits, the profits they seek to obtain are compatible with their social objectives.

What is the relationship between social enterprises and the business sector? What role can the business sector play? In the past, Members might probably think that the business sector was mainly concerned about seeking profits. This was actually true. As the business sector must be accountable to their shareholders, its seeking of profits is thus perfectly natural. In present-day society, however, there has been an increasing awareness in the business sector

of the importance of "using whatever it has taken from society to benefit society". Hence, they will often donate to charitable organizations voluntarily. Furthermore, we can see that many major organizations do pay back the community — the comments by many colleagues on major organizations were negative — by organizing their employees to participate in social activities, helping the disadvantaged groups, or playing a proactive role in fund-raising activities.

Doubtless, it has become the latest trend for the business sector to serve society voluntarily. Hong Kong must learn on all fronts and has only just started at the present stage. We may draw reference from examples around the world. In Britain, for instance, there is a well-known social enterprise called Furniture Resource Centre Group (FRC), headed by Graham MORRIS, also Chief Executive Officer of car maker Rolls-Royce. This is a typical case of the business sector participating in social operation. By and large, FRC operates a wide range of businesses. What is most special about FRC is that it serves mainly the grassroots. For instance, it engages in waste recovery, including collecting old furniture for restoration and resale. This is definitely helpful to environmental protection and recovery. In 2003-04, 84% of its furniture customers were low-income families. This could be considered as assistance to these people.

Besides serving low-income families, FRC also provides training opportunities to the disadvantaged groups through offering employment. In 2003-04, for instance, FRC employed 48 people on 12-month training contracts. Of these employees, 91% had been out of job for one year or more. Upon completion of the training programmes, 69% of them succeeded in seeking employment. I think the experience of FRC is worthy reference. Furthermore, the turnover of FRC even reached £5 million. Of course, it does not record profits every year. Nevertheless, it still managed to make £510,000 in 2001 and 2002. I believe we can learn from these examples. Actually, it is unnecessary for us to invariably make reference to such faraway places as Britain. Examples like these can be found in Hong Kong too.

I have recently met with members of the New Life Psychiatric Rehabilitation Association. The social objective of the Association is to provide training to mental rehabilitants and seek employment for them. Besides organizing such activities as farming, the Association has even asked me whether it is possible to operate a shop at Tsing Yi Bridge to sell souvenirs to tourists. It actually seeks to explore every business opportunity to help the needy so that

they will not have to rely on charitable organizations for care. This is meaningful to the needy for they will be able to derive enjoyment and satisfaction, as well as a sense of achievement, from their work.

Undeniably, the most professional and experienced people in operating enterprises are found in the business sector. Although those who serve the needy disadvantaged are mostly social workers, it is still essential to combine different forces and pool the strengths of everyone before the functions of social enterprises can really be brought into play. Therefore, I hope Members can focus their attention on our need to capitalize on our wide-ranging posts and strengths in striving to push forward in this new territory, instead of trying every possible means to hit out at and sanction unscrupulous organizations in society. We should not ask the Government to treat everything as charitable causes. Instead, we should strive to capitalize on our own abilities to promote our cause. Thank you, President.

MR ALBERT CHENG (in Cantonese): The four amendments to Mrs Sophie LEUNG's motion are actually all about social enterprises. We do not have to look at faraway places. Let me share my experience with Members.

As Members are aware, the Senior Citizen Home Safety Association (SCHSA) was set up in Hong Kong to provide the help bell service. I remember while I was still working in a radio station years ago, a number of single elderly persons passed away during the Lunar New Year. For this reason, Mr LAW Chi-kwong (he was a Member of the Legislative Council at that time) and I decided to set up the SCHSA. President, this year happens to mark the 10th anniversary of the establishment of the SCHSA. Although we did not regard the SCHSA as a social enterprise, my concept back then was that "welfare agencies can set up enterprises, and enterprises can provide welfare". The SCHSA has been a huge success, and I am glad to share with Members the experience I have gained from it.

While we see no need to request the Government to enact legislation to offer us protection, the Government has not offered us any concessions either. We are actually competing with some major telecommunications companies in the business sector. At present, we have 30 000 clients, and we make tens of millions of dollars per annum. Our surplus is used for, besides creating job opportunities and providing home safety services for the elderly and the help bell

service, conducting R&D studies to examine ways to enable patients suffering from senile dementia or needy people with disabilities to access our help bell service outdoor so that when they get lost outdoor, for instance, they may press the help bell to enable us to locate them. We have injected a lot of money into our ongoing studies in this area. Furthermore, our surplus is taxable.

To qualify for assistance from the Social Welfare Department (SWD), the recipients of the help bell service must be aged 70 or over, and meet the requirements concerning Comprehensive Social Security Assistance (CSSA), chronic illnesses, and so on, before the SWD will pay the \$100 monthly fee for them. However, there are still many non-CSSA recipients, such as recipients of the old age allowance, who need the service. Hence, we have been providing them with the service free with our surplus. According to my understanding, the spirit of "social enterprises" is by no means protectionism. Most importantly, we must have the competitive edge.

I can tell Members why we have managed to outperform the telecommunications companies. When my proposal was first raised, I instantly received telephone calls from many telecommunications companies — mainly paging and security firms — saying that they were offering the same service. However, they engaged predominately in security and paging services. They would ask the elderly who pressed the bell what happened in a mechanical manner. Sometimes, the elderly would press the bell for no reason; they might simply want to chat with someone. Our service has now turned into some sort of a security service. For instance, the elderly would press the bell when they were cheated, approached by salesmen, or even robbed. The people we employ, however, include the disadvantaged, people with disabilities, voluntary workers, and caring persons. They act almost like a social worker when answering calls by chatting with the elderly callers. Even if the elderly do not press the bell, we will press the bell regularly to chat with them and enquire about their conditions. In my opinion, it is feasible for welfare agencies to set up enterprises. At the same time, the Government has been providing a wide range of services, such as meal delivery. I have been encouraging welfare agencies to do the same too.

Among the many amendments proposed today, mention is made of legislation on protectionism, tax exemption, and so on. Insofar as tax payment is concerned, President, Hong Kong is different from foreign countries. While tax rates are high in foreign countries, they are low here in Hong Kong. Furthermore, this is not entirely significant, since only profits are taxable. I have no idea whether the SCHSA has paid any tax. Although I am the founder,

and have just been elected again as a member of the Executive Committee — I have been a member of the Executive Committee for 10 years — I am responsible mainly for raising funds and I have therefore no idea whether we have paid any tax. I believe we have. Nevertheless, the money we make will be used on welfare causes again. Hence, I believe tax payment is not an issue.

Therefore, insofar as today's motion and amendments are concerned, as I pointed out previously during a debate on the sale of properties, it is the spirit that matters most. Today's motion and all the amendments share the hope that the Government can immediately encourage welfare agencies to set up enterprises. We have to give them encouragement too. It is this spirit that matters most, and I hope Members can support the motion and all the amendments.

Actually, the first social enterprise in Hong Kong was not set up by the SCHSA. The discount shop operated under the Hong Kong Federation of Trade Unions (FTU) has recently hinted that it will take over work outsourced by The Link Management, but it does not really matter. The co-operatives operated by Mr CHEUNG Man-kwong's Hong Kong Professional Teacher's Union are a typical example. I feel that we should not rely excessively on social resources; instead, we should encourage welfare agencies and help them. Mrs Selina CHOW commented earlier that even the CEO of Rolls-Royce operated a social enterprise. I wonder if Mrs CHOW has omitted anything. Perhaps I am not aware of other examples of retired CEOs of major enterprises overseas acting as consultants in welfare agencies in order to help the agencies set up businesses. There are many retired senior government officials in Hong Kong too. I hope they will not choose to work in private organizations, for their pensions are already very generous. Actually, they can capitalize on their experience to help us set up more social enterprises. For instance, the Director of SWD may, upon retirement, consider assuming the post of CEO in the SCHSA.

I find it most imperative for us to support the spirit of the motion and the amendments. Whether protectionism, tax exemption, or even enactment of legislation is required is nothing of our concern. Colleagues proposing various amendments and the original motion today all share the hope that the Government can help set up social enterprises to serve their recipients. This is where the spirit actually lies. Hence, I would like to appeal to colleagues here not to be so particular about the wording. Instead, we should unanimously support the motion and all the amendments. At the same time, the Government

should truly implement the proposal by expeditiously spearheading and assisting welfare agencies in setting up social enterprises.

Thank you, President. I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Whenever I met members of labour unions, I would ask them why they joined their labour unions, such as the Hong Kong Federation of Trade Unions. They would reply that their labour unions would do things for them and often organize snake feasts at a lower price. Furthermore, it would be cheaper to join tours and apply for travel documents through the labour unions. I find these most laughable.

It is definitely a virtue for labour unions to provide welfare by, for instance, offering food at a lower price than the price elsewhere. However, if a labour union is capable of fighting for workers' due interests, such as a pay rise of 5%, it need not treat the workers to cheaper seafood. Actually, the workers can even donate their pay rise to their labour unions for organizing activities. The logic is clear.

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

This example does illustrate that it is wrong for labour unions to rely on welfare to make the workers its ally in the hope of improving labour relationship, like what fire fighters do, or gaining their support for the Government. I am saying all these because the concept of social enterprises is exactly like this. Many social enterprises are no longer social enterprises. For instance, electricity supply, an indispensable public utility, is at present being monopolized and controlled by consortia because of the lucrative profits. As Members are aware, there are even cases of control by foreign consortia. For instance, electricity suppliers in Hong Kong are being manipulated by Exxon.

Let us focus our discussion on small social enterprises instead of large ones. Are there any small social enterprises in Hong Kong which are not monopolized by consortia? Some enterprises were originally not monopolized by consortia. For instance, the construction of the Mass Transit Railway (MTR) was funded by Hong Kong people. However, the MTR was eventually

privatized. Likewise, the construction of the Kowloon-Canton Railway (KCR) was financed by Hong Kong people. Subsequent to a merger, the KCR was privatized too. These social enterprises were meant to provide inexpensive, appropriate services to benefit all Hong Kong people. Had they not fallen into the hands of the consortia, the enormous wealth generated would not have turned into profits and a power of profiteering. This point must first be addressed if we are to discuss social enterprises today.

Many people hold the view that social enterprises are likely to hurt small business operators because the latter will thus have to compete in the market for opportunities to sell their services and commodities. I would like to tell Members that the sufferings of small and medium enterprises (SMEs) have nothing to do with the emergence of social enterprises, but are rather caused by monopolization by major consortia of public utilities and essential resources in society.

For this reason, in discussing social enterprises, we are actually talking about doing charity work in the hope that the Government will do it. But the point is: Has the Government done so? If it really intends to do so, the wealth created by Hong Kong people should not be turned merely into profits to be pocketed by major tycoons, bankers and people reaping generous profits through speculation in the financial markets. Hence, our tax regime must be reformed, and the social wealth supposed to be shared by Hong Kong people should be apportioned and returned to them. Public utilities or other utilities should be controlled by society instead of being privatized. The profits and wealth thus generated could be enormous. Should this problem be resolved, we will get a better key to open the door to resolving all the problems confronting us. Even the unemployment problem can be resolved too. Let me cite the Tamar incident as an example. Many people have expressed support because of the Government's argument that job opportunities may be created as a result of the construction of the Government Headquarters. However, such an argument is wrong. It is also wrong for labour unions to make such a comment.

Our workers are by no mean selfish. They have created a lot of wealth in society. Even if they are exploited, oppressed, they will not make such a naive request as to create a white elephant out of the belief that an extra 2 000 workers will then be employed. Our workers are not so lowly. What we ask for is social justice and social equality. Therefore, it will be impossible for labour unions to fight for workers' interest so long as they cannot consider the issue from this perspective.

An example in the United Kingdom has been cited with reference to social enterprises. I have studied British history before. A man named OWEN spent his whole fortune on co-operatives. During the initial stage of operation, he was hailed in every cocktail reception he threw as a philanthropist. But then, the co-operatives could not stay in business for failing to compete with major consortia. Consequently, he could only pin his hope on the government. However, he was called a lunatic by everyone: Sir OWEN had turned crazy — failing to operate his business, he got out of his mind in the end.

What I want to say is that we need not look at the matter from a perspective of charity or mercy, and offer financial assistance whenever there is anything wrong — The Commission on Poverty is distributing biscuits in this manner. What we need is a comprehensive social reform — a government elected by universal suffrage to allocate social resources according to public opinion. We do not want a low tax regime whereby LI Ka-shing can make a fortune while we get worse off; we do not want public utilities to be reduced to someone else's money-spinner, but a lethal weapon for us; we do not want a handful of people, after making a fortune, to donate \$10 billion to erect tombstones to commemorate their construction of mortuaries, hospitals, and the like. What society needs is justice, not mercy. Therefore, I approve of the notion of social enterprises. To tackle major issues in perspective, a democratic system must be implemented, so that all major enterprises will be publicly run, and all matters directly managed and controlled by the people.

I hope we can lift our heads. For why should we, being humans, crawl on the floor like beasts? We should rise to break away from slavery(*the buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, your speaking time is up.

MR WONG TING-KWONG (in Cantonese): One of the important benefits that can be brought about by developing social enterprises is to assist the disadvantaged groups, create job opportunities and upgrade their skills to enable them to become self-reliant while reducing their reliance on government assistance, enhance social harmony and cohesion, thereby prompting the Government and non-governmental organizations (NGOs) to pay more attention to the development of social enterprises. However, there is inadequate

understanding in Hong Kong society of social enterprises, and there is also concern about competition with small and medium enterprises (SMEs). In this connection, the Government should develop a partnership with the business sector, public bodies and voluntary organizations to jointly discuss and formulate comprehensive and well-conceived proposals for the development of social enterprises and then promote and implement them.

According to academics engaging in studies on social enterprise, the spirit of social enterprises is to help the Government, the business sector or NGOs to utilize resources more flexibly with a view to creating social values, such as helping the poor, environmental protection, educating the next generation, and so on. At present, Hong Kong's social enterprises can be divided mainly into three models, namely enterprises, co-operatives and local community economy.

Prior to 2001, social enterprises were predominately operated by social service agencies specializing in serving people with disabilities by the provision of training and job opportunities for them. After 2001, the Enhancing Employment of People with Disabilities through Small Enterprise Project was launched with the Government's financial support of \$50 million. Under the Project, NGOs may apply for each business a maximum amount of \$2 million in the form of a non-recurrent grant for the payment of non-operating expenses during the initial operation of the business and operating expenses for the first year. The relevant businesses will eventually have to become self-financing.

At present, there are 31 approved businesses covering a wide scope, from catering to car wash, domestic maintenance, laundry, pest control, removal and delivery services. These businesses have altogether created 396 posts, with 290 of them taken up by people with disabilities.

I believe social enterprises can, under a healthy development, achieve a multi-win result. While employed people with disabilities can thus become self-reliant, participating organizations can assist the disabled in integrating into society, clients can obtain the services they require, and the Government can reduce its long-term assistance to the relevant people and in turn reduce CSSA expenses. Consequently, social harmony and cohesion will be enhanced.

Recently, there have been views that the concept of social enterprises can be applied to assisting unemployed people as well. While I agree that it is easier for social enterprises operated for people with disabilities to gain public

support, I consider it equally worthwhile to encourage the setting up of enterprises to assist able-bodied unemployed people. Similar views have also been raised in today's amendments to provide social enterprises with more favourable conditions by, for instance, stipulating in the outsourcing contracts of government departments and public organizations that social enterprises be given priority in tender exercises, setting up one-stop social enterprises support services, offering tax concessions, introducing rules and regulations conducive to the operation of social enterprises, and so on. The Administration should give serious consideration to these proposals.

Meanwhile, we have to consider whether social enterprises will compete unfairly with existing SMEs, and whether the relevant posts in SMEs will thus be replaced. Some economists hold that social enterprises may explore the market domains where there are demands for business. In the long run, social enterprises must be able to sustain their operation independently and operate on a self-financing basis in order that they can compete fairly with SMEs. Without adequate competitiveness, these social enterprises naturally cannot survive and will be eliminated in the end. To sum up, social enterprises similarly have to bear risks. However, I believe they generally bear less risk and liability than SMEs for the former have the support of the Government and the community.

Therefore, I consider it essential to, while helping the disadvantaged to lead a new life under the concept of "From Welfare to Self-Reliance", enhance communication between social enterprises and SMEs, balance the views of all parties, allay the anxieties of SMEs and, with the help of the benefits brought about by social enterprises and the overseas successful experience in applying the concept to assisting able-bodied unemployed people, study ways to further develop social enterprises to help the needy to get prepared for joining the workforce and ultimately becoming self-reliant.

Deputy President, I so submit.

MR BERNARD CHAN: Deputy President, as the Chairperson of the Hong Kong Council of Social Service, I have been taking a particular interest in this subject.

Many people probably do not even realize what a social enterprise is. They would probably be surprised if you told them that there are companies which put social ends before profit.

And most people probably do not know that Hong Kong already has a number of social enterprises. They are mainly operated by non-governmental organizations (NGOs) and are especially active in such areas as domestic services and sales.

These enterprises occupy niches. They provide goods or services in markets that the profit-making sector is not interested in. Or, they deliberately aim to employ people who face particular challenges in the labour market.

Experience overseas shows that businesses run for partly social ends can be vibrant and largely self-supporting. They can compete and succeed in the open market. They can encourage the disadvantaged groups and neighbourhoods to help themselves. It would be good to see this movement take off here in Hong Kong. But we must be realistic about how it could happen.

Anyone who thinks the Government should take the lead does not get it. Social enterprises are about self-reliance. By definition, there should not be a major role for the Government in developing them.

In the United Kingdom, the development of social enterprises was a bottom-up process. NGOs, neighbourhood organizations and other groups and individuals slowly developed enterprises by themselves all over the country. It was not kick-started by the central government. It was not part of an official policy. It was something people started for themselves. If any officials were involved, they were from the local town hall.

In Hong Kong, we do not seem to have that tradition of local, neighbourhood-level initiative. We have come from a very top-down, colonial system of administration. There seems to be an assumption that you can leave all community issues to the Government. And we have a large bureaucracy that is happy to put itself in charge.

Also, we do not have different local governments trying their own ideas out. We have uniform standards and rules across the whole territory. The same bureaucracies, regulations and procedures apply in every housing estate, street and neighbourhood.

However, there are ways the Government could encourage social enterprises.

It could look at our social welfare system. The system does not encourage self-reliance. The Comprehensive Social Security Assistance is inflexible. If you start to earn too much, you lose all your payments. We need to see if there are incentives not to work, that we could remove. Also, perhaps the Government could co-ordinate and focus its training and other programmes more effectively.

The Administration should also continue to look at the regulatory and other barriers to the establishments of small businesses. Despite our reputation as a free economy, there are licensing regimes, restrictions on building use, health and safety rules and dozens of other ways we hinder economic activity. There are often good reasons for them, but we should take a good look at their costs and benefits.

Our economic structure favours bigger companies. Large conglomerates deliver many essential goods and services and there are concerns about cartel-like behaviour. For whatever reason, many business overheads like rents are high. And that is a challenge to all small enterprises and start-ups.

The Government can also play a role in offering social enterprises a chance to tender for public contracts, subject to safeguards on things like value for money.

So there are things the Government can do. But at the end of the day, social enterprises will be developed by NGOs, educational bodies, youth groups, churches and neighbourhood and other groups.

Last but not least, they need input from other parts of the community. Social enterprises need professional management and advice. So it is essential that the private sector plays a part. The education sector could play a role here in training. And serving and retired businessmen would be an obvious source of skills.

With understanding and support from across the community, social enterprises could make a real difference to the disadvantaged groups and districts.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): Mrs Sophie LEUNG, you may now speak on the amendments. You have up to five minutes to speak.

MRS SOPHIE LEUNG (in Cantonese): Deputy President, the notion of social enterprises lies in encouraging social groups to make self-improvement and become self-reliant and, as Mr Bernard CHAN, Chairperson of the Hong Kong Council of Social Service, put it earlier, get themselves out of their disadvantaged position with the mentality that "every path is carved out by walking". This is also a key conceptual element contributing to social harmony. While I have no objection to the offer of government assistance in rationalizing policies during the formative stage of social enterprises to enable them to compete and survive in the market, society as a whole should begin with giving more encouragement and assistance to enable disadvantaged groups to experience and learn how to become self-reliant. To achieve true self-enhancement means to be able to rely on oneself for survival in society. This is the only way we can truly help the disadvantaged groups. For these reasons, we are not suggesting offering concessions to social enterprises, for this is not compatible with the spirit of social enterprises. A similar argument was advanced by Mr Albert CHENG too. I very much hope that Dr Fernando CHEUNG and Miss CHAN Yuen-han can gain a deeper understanding of the components of social enterprises from this perspective.

With regard to Miss CHAN Yuen-han's reference to "the monopoly of consortia and the tilting of government policies towards large consortia" in her amendment, the Liberal Party must emphasize that there is no tilting of policies towards large consortia in Hong Kong. Actually, it has been pointed out by many global research reports that Hong Kong is one of the freest economies in the world and has a highly transparent government. There is no question of the phenomenon mentioned by Miss CHAN happening in Hong Kong. Therefore, if I am to support Miss CHAN's amendment, that is, to support her and join her in telling lies, I can definitely not do so.

Furthermore, all the amendments express quite a strong view about my proposal of "breaking away from the confines of the pure social work sector". I hope Members can understand that I do not mean to deny the role played by the social work sector in social enterprises. However, as social development grows increasingly complex, and coupled with globalization, people who are unable to catch up with the giant wheel of time must seek assistance from society. Given

the ever-increasing pressure confronting the social work sector, should we continue to make social workers cope with the growing demands? Should we do that or should society as a whole not share the burden, from the perspective of universal participation, so as to give the social work sector a break? For these reasons, we find it impossible to support the amendments. Furthermore, in order to avoid overloading the social work sector, it is all the more necessary to implement universal participation with more vigour, with the ultimate goal of leading us to the path to social enterprises.

Besides, Members should be well aware that social enterprises should not be taken as welfare services. This was earlier pointed out by a number of Members and, in particular, most vividly by those who have personally experienced or taken this path. Social enterprises are no longer confined to the scope of the pure social work sector. With the incorporation of commercial elements, social enterprises are confronted with such problems as competition, management, and so on. How can social enterprises succeed by relying solely on the strength of an individual sector? What is more, we can tell from enormous past experience that social enterprises are not to be handed directly to recipients. For instance, the "Change For Good" campaign organized by Cathay Pacific Airways is a hugely successful social enterprise. Members taking Cathay Pacific Airways next time may as well take a look at the campaign, which was set up in 1987. Not only has Cathay Pacific Airways been put on the global market, Hong Kong's social resources have even been injected into UNICEF as a result.

A lot of experiences overseas have illustrated the fact that enhanced cross-sectoral collaboration, particular with the involvement of the business sector, is one of the keys to the success of social enterprises. I really hope Members can seriously consider the matter and gain a fuller understanding after today's serious discussion. Deputy President, I so submit.

FINANCIAL SECRETARY (in Cantonese): Deputy President, first of all, I thank Mrs Sophie LEUNG for proposing this motion for debate today, so that we can listen to Members' views on the development of social enterprises. It is a major task of the Commission on Poverty (CoP) to promote social enterprises, with a view to helping the disadvantaged groups to give play to their potentials and become self-reliant. I am very glad that today's motion and the speeches

delivered by many Members earlier recognize the value of social enterprises and support the direction of developing social enterprises. What I have just said is very important and so, I repeat: I am very glad that today's motion and the speeches delivered by many Members earlier recognize the value of social enterprises and support the direction of developing social enterprises. However, some Members opined that government policies are tilting towards large consortia and considered social enterprises a means to reduce monopolization. This, I beg to differ. As I emphasized during the discussion on the motion "Maintaining Hong Kong's role as the leader of economic development in the region" last Wednesday, the Government of the Special Administrative Region (SAR) has endeavoured to improve the business environment under the "market leads, government facilitates" principle, in order to ensure a fair and open market for all enterprises, irrespective of the scale, so that they can provide customers with goods and services of a high quality through competition and hence increase the overall economic benefits. I must reiterate that under the major principle of supporting and encouraging fair competition, the Government will not provide and has not provided exclusive concessions to individual business organizations.

(THE PRESIDENT resumed the Chair)

Before discussing the specific measures, I would like to share with Members some of my experiences about social enterprises. To promote social enterprises successfully, a correct policy positioning is very important. Over the past few months, the CoP has conducted in-depth studies and discussions on both local and overseas experiences in social enterprises. Members of the CoP unanimously think that to employ business practices to achieve social objectives can effectively utilize social resources, promote cross-sector collaboration and also help the unemployed and other disadvantaged groups to obtain more social benefits. However, to enable this innovative model to take root and further develop in Hong Kong, we must understand the factors contributing to the success of social enterprises. Social enterprises are a kind of enterprises and so, like entrepreneurs in other business organizations, social entrepreneurs must possess the spirit of corporate management and competition, and be prepared to face various challenges of business operation. We cannot treat social enterprises as conventional welfare services.

I am aware that many non-governmental organizations (NGOs) also recognize the potentials of social enterprises in helping the disadvantaged groups, but we cannot make the social welfare sector, which has all along been a provider of welfare service, participate in the market overnight. Similarly, in order to make the business sector develop a model beyond the existing one underpinned by donations in fulfilling their corporate social responsibilities and set up social enterprises through co-operation with NGOs to provide the disadvantaged groups with more long-lasting assistance, changes in the mindset of the business sector are also necessary. The success of social enterprises hinges on the concerted effort of those with a sense of mission towards society and business expertise, so as to provide the basis for further promoting cross-sector collaboration.

At the meeting held in September last year, the CoP agreed to explore the potentials of Hong Kong to further promote the development of social enterprises and agreed to introduce a series of measures to encourage their development. In the Government's Budget for the 2006-07 financial year, I gave an account on a number of measures to be taken to promote the development of social enterprises. Three areas of our work in this connection are directly related to today's motion:

(1) Establishing social values and public acceptance.

Although social enterprises have been developed in Hong Kong for some time, the public still has very little knowledge of them. For this reason, the CoP has, over the past few months, endeavoured to promote the value of social enterprises to the public, including the production of a TV series and organizing talks and conferences on social enterprises. These publicity activities mainly serve to enable various sectors of the community to understand through local and overseas experience that social enterprises are a viable business model and a sustainable poverty alleviation initiative, as well as the success factors and the importance of cross-sector collaboration (especially involvement of the business sector). At a conference on social enterprises held in April, I had the opportunity to exchange views with a number of overseas social entrepreneurs, including some bankers and experienced managers of multinational corporations. Their experience and views are precisely proof that enterprising and competent entrepreneurs are not only capable of making profits in the business sector. They can also operate social enterprises successfully using their expertise.

(2) *Promoting social entrepreneurship training*

Entrepreneurs with market acumen are extremely important to the sustainable development of social enterprises. At its meeting yesterday, the CoP endorsed a series of initiatives to promote social entrepreneurship training. They include:

- (i) Promoting universities as a bridge between NGOs and the business sector by organizing social entrepreneurship training programmes in universities;
- (ii) Extending the support services currently provided by the Trade and Industry Department for small and medium enterprises (SMEs), including the SME Mentorship Programme and Business Advisory Service, to social enterprises;
- (iii) Providing focused training for NGOs and aspiring social enterprises; and
- (iv) Identifying suitable platforms to facilitate cross-sector collaboration.

(3) *Policy support*

Some Members suggested that stipulations be made by government departments and public organizations in outsourcing contracts or when renting out spaces that priority be given to social enterprises. I think the proposal of giving them absolute priority is undesirable, for we cannot ignore the quality of service and the utilization of public resources. Rather, we must consider the impact on other parties impartially, including the impact on SMEs and the interests of users of outsourced services. Moreover, just as Mr Albert HO pointed out earlier, this proposal may contravene the provisions of the Government Procurement Agreement of the World Trade Organization. However, the CoP agrees that an environment conducive to business can effectively facilitate the development of social enterprises. In this connection, I hope that policies or measures which may hinder the development of social enterprises can be further reduced by, among other things, facilitating participation by social enterprises in tendering for government contracts under the principle of ensured transparency, fairness and value for money, and also relaxing the requirement under the Enhancing Employment of People with Disabilities through Small Enterprise Project for the recruitment of people with disabilities.

Apart from an additional provision of \$30 million to the Home Affairs Department for the promotion of the Enhancing Self-Reliance Through District Partnership Programme under which district-based poverty alleviation measures, including support to social enterprises, will be implemented, \$9.8 million has also been earmarked to support the development of social enterprises, including social entrepreneurship training. I believe the provision can appropriately promote the development of social enterprises.

Some Members mentioned earlier that we must draw up a comprehensive policy and even enact new legislation to further promote the development of social enterprises in Hong Kong. As I said earlier, a correct policy positioning is very important. According to overseas experience, the development of social enterprises is not premised on welfare policies. Rather, it serves to support employment while promoting an enterprising spirit. The CoP will continue to identify a model most suitable to Hong Kong through cross-sector discussion.

I understand that some Members are concerned about the development of co-operative societies. Co-operatives are a kind of social enterprises. They also require public acceptance, and they must have knowledge of business operation and competitiveness. I understand that the Secretary for Health, Welfare and Food has, earlier on, met with operators of co-operatives and also people who plan to set up co-operatives, in order to understand the problems that they encountered in establishing and operating co-operatives. As I also mentioned earlier, those measures which encourage and promote social enterprises can assist the development of co-operatives. The Government will continuously pay attention to how our policies can complement the development of social enterprises.

Some people are concerned that if the Government tilts towards social enterprises, it might result in unfair competition for the SMEs or even turn into a "zero-sum game". But if we treat social enterprises as a kind of enterprises and adopt the same policies as those for the SMEs by providing them with reasonable but not privileged support, encouraging mutual facilitation and co-operation, and working together to identify needs that have yet been met and open up more space for development in the market, it would not result in unfair competition and on the contrary, it would be conducive to promoting a spirit of entrepreneurship and social harmony.

The SAR Government very much supports the development of social enterprises, but the promotion of the development of various types of social enterprises will take time and require support from various sectors of the community. At present, it is easier for social enterprises operated for the benefit of people with disabilities to obtain public support, but continuous efforts still need to be made in providing employment support to the able-bodied unemployed. On the basis of successful experiences, efforts can be made to further promote public acceptance of suitable support measures in the market. This can effectively help members of disadvantaged groups who lack ability and confidence to rejoin the job market.

In the meantime, we must encourage participation from more people with business experience in the operation of social enterprises, so that the development of this type of social enterprises can continue. In this regard, I hope that more members of the business community and chambers of commerce can establish partnership with NGOs, in order to make up for the inadequacies in this respect.

I thank Members for expressing their views on this issue and support for promoting the development of social enterprises. The SAR Government will continue to work with the business sector as well as other sectors of the community, so that the disadvantaged groups can rebuild their confidence and rejoin the workforce through social enterprises and start to lead a life with positive attitudes and values.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Miss CHAN Yuen-han to move her amendment to the motion.

MISS CHAN YUEN-HAN (in Cantonese): President, I move that Mrs Sophie LEUNG's motion be amended.

Miss CHAN Yuen-han moved the following amendment: (Translation)

"To add "Hong Kong has been stuck with the problem of structural unemployment for a long time, it is very difficult for the grassroots people to seek employment; the monopoly of consortia and the tilting of

government policies towards large consortia have also deprived the grassroots workers of the opportunities to start small businesses; in addition, since" after "That, as"; to add "(a) amending the Co-operative Societies Ordinance to facilitate the setting up of social enterprises; (b) stipulating in the outsourcing contracts of government departments and public organizations that social enterprises be given priority in tender exercises;" after "implementing the following measures:"; to delete the original "(a)" and substitute with "(c)"; to delete the original "(b)" and substitute with "(d)"; to delete the original "(c)" and substitute with "(e)"; to delete the original "(d)" and substitute with "(f)"; to delete the original "(e)" and substitute with "(g)"; and to delete "break away from the confines of the pure social work sector by encouraging and embracing" after "various sectors of the community should, in developing social enterprises," and substitute with "encourage and embrace".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Miss CHAN Yuen-han to Mrs Sophie LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mrs Sophie LEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mrs Sophie LEUNG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Mr CHEUNG Man-kwong and Mr SIN Chung-kai abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Dr YEUNG Sum, Mr Andrew CHENG and Mr LEE Wing-tat abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, eight were in favour of the amendment, 13

against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 15 were in favour of the amendment, two against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Vigorously promoting the development of social enterprises" or any amendments thereto, this Council do proceed to each of such divisions after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of the motion on "Vigorously promoting the development of social enterprises" or any

amendments thereto, this Council do proceed to each of such divisions after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Dr Fernando CHEUNG, you may move your amendment.

DR FERNANDO CHEUNG (in Cantonese): President, I move that Mrs Sophie LEUNG's motion be amended.

Dr Fernando CHEUNG moved the following amendment: (Translation)

"To delete "and" after "with the objectives of enhancing social capabilities" and substitute with ","; to add "and introducing rules and regulations conducive to the operation of social enterprises" after "establishing positive social values"; to delete "and" after "basic training" and substitute with ","; to add "and tax concessions" after "mentorship support"; to add ", including giving priority to social enterprises when renting out spaces of the Government, public bodies or organizations providing outsourced services, and reviewing the existing legislative provisions relating to social enterprises (e.g. Co-operative Societies Ordinance)" after "so as to create an environment conducive to their growth"; to add ", including co-operative societies" after "teach them how to develop social enterprises"; and to delete "local and overseas experience in developing social enterprises indicates that the successful ones possess such management elements as professionalism and market sensitivity, the Government and various sectors of the community should, in developing social enterprises, break away from the confines of the pure social work sector by encouraging and embracing the participation of willing and capable talents from the business sector" after "in addition, as" and substitute with "the development of successful social enterprises must be capable of being sustained, and as the experience of local and overseas social enterprises indicates that dedication to the social service profession, policy support and market sensitivity are the three major indispensable elements for sustainable development, the Government, in developing social enterprises, should encourage various sectors of the community to understand and support the social objectives of social enterprises, relax the legislation on social enterprises in its

business policies, formulate policies conducive to their sustainable development as well as foster their viability by concrete actions". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Fernando CHEUNG to Mrs Sophie LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mrs Sophie LEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mrs Sophie LEUNG has claimed a division. The division bell will ring for one minute, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, 10 were in favour of the amendment and 13 against it; while among the Members returned by geographical constituencies through direct elections, 24 were present, 21 were in favour of the amendment and two against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr Frederick FUNG, you may move your amendment.

MR FREDERICK FUNG (in Cantonese): President, I move that Mrs Sophie LEUNG's motion be amended.

Mr Frederick FUNG moved the following amendment: (Translation)

"To delete "putting in place support" after "(c)" and substitute with "setting up a one-stop social enterprises support services centre to provide support, training and advisory"; to add "seed money, short-term rent remission," after "including the provision of"; to add ", including formulating a government procurement policy which helps promote social enterprises and giving impetus to government departments and public organizations to outsource more service contracts to such enterprises" after "an environment conducive to their growth"; to delete "so as to teach them how" after "the general public" and substitute with "and providing courses for those who aspire to join such enterprises in order"; to delete "break away from the confines of the pure social work sector by encouraging and embracing" after "the community should, in developing social enterprises," and substitute with "encourage and embrace"; and to delete "willing and capable" after "the participation of"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Frederick FUNG to Mrs Sophie LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mrs Sophie LEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mrs Sophie LEUNG has claimed a division. The division bell will ring for one minute, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr CHEUNG Hok-ming and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 10 were in favour of the amendment and 14

against it; while among the Members returned by geographical constituencies through direct elections, 24 were present, 21 were in favour of the amendment and two against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr Albert HO, you may now move your amendment.

MR ALBERT HO (in Cantonese): President, I move that Mrs Sophie LEUNG's motion be amended.

Mr Albert HO moved the following amendment: (Translation)

"To delete "break away from the confines of the pure social work sector by encouraging and embracing" after "in developing social enterprises," and substitute with "encourage and embrace"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to Mrs Sophie LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 10 were in favour of the amendment and 14 against it; while among the Members returned by geographical constituencies through direct elections, 24 were present, 21 were in favour of the amendment and two against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mrs Sophie LEUNG, you may now reply and you have four minutes eight seconds.

MRS SOPHIE LEUNG (in Cantonese): President, I am happy to see that so many Honourable colleagues have spoken on today's motion on social enterprises. However, about certain errors and misunderstandings, I would also like to say a few words here.

First, social enterprises are in fact a way of earning social capital through an enterprise. Social capitals do not necessarily refer to money. As Mr Albert HO has said, the promotion of certain worthy causes and different values also produces social capital, such as the re-mobilization of the strengths of the underprivileged groups for the purpose of helping them to face adversities and seek self-improvement, and so on. Again, the Capacity Building Mileage Programme organized by the Women Commission is also one of such successful examples.

Second, social enterprises may not work in such a way as providing the resources directly from the enterprises to the beneficiaries. As I have just said, the resources may not be delivered to the beneficiaries direct. For example, the Change for Good campaign organized by Cathay Pacific Airways is another such example as the donations may not be delivered to the beneficiaries direct. There are many such cases in society.

Third, in recounting their experience of handling certain cases of social enterprises, many colleagues find that maintaining their sustainability is a major problem. However, this is exactly where the enterprising spirit lies. Mr BOMER of Microsoft has compiled a book, in which a point really deserves our

discussion. He says if a person has come up with a business idea, there is only a 10% probability of turning it successfully into an enterprise; and among such enterprises, the probability of operating them successfully with sustainability is also 10%. Therefore, from this, we can see that it is very difficult for us to launch enterprises successfully. This is exactly the reason why we need to promote social enterprises with an enterprising spirit,

I would also like to mention another point. If we can build flexibility into the policies for supporting social enterprises, I think it is a worthy cause deserving our support. However, if we have to enact certain laws or formulate certain policies specifically in favour of social enterprises, both Mr Albert CHENG and I will strongly disagree because, in doing so, we are imposing a glass roof on the room of future development of social enterprises. We should have greater confidence in extending our support to social enterprises. In addition, we should strive to gain a fuller understanding of the enterprising spirit — to learn how to start from scratch in establishing an enterprise, from having no experience in something to gaining the experience bit by bit — this is the enterprising spirit.

Besides, I would also like to say one more point. With regard to the Government's proposed intention of organizing more training programmes in universities, I very much hope that the Government can categorize those existing successful examples of social enterprises as the classical cases, so that everyone can have a better understanding of such successful examples and learn more through observing the successes of others.

President, finally, I would like to respond to Mr WONG Kwok-hing's criticism of me. He accused me of suffering from thinking errors — or his wording may not be so direct. However, I feel that he has been putting himself into all kinds of assumptions and extending such assumptions indefinitely to say that all the accusations are targeted at him. Consequently, he puts all the blame on me. I have to express regrets about this.

Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Sophie LEUNG, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Second motion: Measures to combat drink driving.

MEASURES TO COMBAT DRINK DRIVING

MR LAU KONG-WAH (in Cantonese): President, Father's Day falls on this Sunday, and those who are sons and daughters are busy preparing for a celebration with their fathers. However, the daughter of a taxi driver who died as a result of an accident involving suspected drink driving last month has just conducted the funeral of her father. Yesterday, Miss LAU issued through the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) an open letter. In the letter, there are words that came straight from her heart, which I would like to quote here: "It is undeniable that having drinks and gatherings with friends in spare time has become part of the life of many Hong Kong people. Unfortunately, after the occurrence of numerous drink driving accidents involving casualties over the years, some people are still paying no heed at all to the danger of drink driving and will only trust in their own driving skill. As a result, the lives of other people can be lost any moment, and many innocent families are affected. And my father died victim of this drink driving accident. Being a driver by profession, he understood that a clear head was essential for driving. However, due to the neglect of this important point by someone else, it is impossible for my father to make any accusation today."

President, the deceased cannot make any accusation, but those who are alive (including all Members of this Council) can make a serious introspection. Actually, the harms that can be caused by drink driving do not differ from the result of a murder. Let us take a look at the penalties for drink driving in Hong Kong. They are the same as those for causing death by dangerous driving. Ten driving-offence points are incurred in both cases. The maximum penalty for an offender of drink driving is a fine of \$25,000 and imprisonment for three years at the first conviction. The offender will, in addition, be disqualified from driving for a period of not less than two years in case of a subsequent conviction. The penalties in Hong Kong are reasonable when compared with other places and are accepted by the public.

Unfortunately, the problem of drink driving is still serious in Hong Kong. The number of prosecutions has doubled over the past 10 years. The number of prosecutions in 1996 was 649 cases. It increased to 1 335 cases in 2005. And the first four months of this year recorded 448 cases, representing an increase of 15% over the same period last year. The problem is getting increasingly serious.

The DAB conducted a survey on drink driving in 2004 and early 2006. It was found on both occasions that nearly 70% of the respondents considered that the existing penalties for drink driving were reasonable, and more than 50% of the respondents admitted that they themselves or their relatives and friends had driven after drinking. At the same time, more than 50% of the respondents considered that the law-enforcement departments had not done enough in combating drink driving. There is legislation. There are penalties. There is law enforcement. There is publicity. So where does the problem lie? It lies in the lack of deterrence and the lack of preventive measures. It is too late to conduct alcohol tests when the traffic accident has already occurred.

According to the existing legislation, the police may require a driver to take an alcohol breath test under the following three conditions: Firstly, there is a traffic accident; secondly, there is an offence against traffic legislation; and thirdly, there is "reasonable doubt". What is "reasonable doubt"? According to the internal guideline of the police, it must be seen that the driver is flushing all over, having dull and red eyes and carrying a heavy smell of alcohol or the driver must have admitted to have drunk before the police can require him to take the test. But who that is drunk would admit to be drunk? Moreover, my

observation in this Council is that among our colleagues, those Members who are called "Wine God" and "Wine Conqueror" look exactly the same as their normal selves even when they have taken several glasses of wine. It can be said that not the smallest change is shown on their faces. Therefore, it is not good enough to rely on observation alone.

Every day, many drivers in the community regularly drink and stealthily drive, and the police must have reasonable doubt before they can conduct a test. Moreover, it is explicitly stipulated in their internal guideline that no road block shall be set up for the purpose of conducting breath tests. Therefore, the police appear to be incapable of preventing drink driving.

As a matter of fact, many countries overseas have implemented random alcohol testing for a long time. Random alcohol testing refers to the setting up of testing sites at different locations and at different hours, with the police randomly stopping vehicles and requiring drivers to provide specimens of breath even if there was no prior traffic accident. The merit of this measure is that problems are pre-empted before they arise. And the findings of many studies indicate that this policy is helpful to reducing traffic accidents. Australia, where random alcohol breath testing has been implemented for many years, has effectively reduced night-time traffic accidents by 20%. The European Union also put forth the proposal of introducing random alcohol breath testing to its member states in 2004. And the World Health Organization has also pointed out that random breath testing can, to a large extent, cause drivers to comply with regulations.

Let me cite a specific example for comparison. The State of Victoria in Australia, where random breath testing has been implemented, conducted a total of 1.1 million random alcohol breath tests in 2001 and the number of people who died from drink driving accidents was 62 only. However, in Ireland, which has about the same population, the test was conducted for some 11 000 drivers on grounds of "reasonable doubt" only and no random test was undertaken. The result was that the number of people who died in drink driving accidents was 411, which was 6.6 times that of the State of Victoria. The two places do not have exactly the same background, but the difference is so great that the effect of random testing is very obvious. Can we just turn a blind eye to measures that are effective? Can we care nothing at all about safeguarding public safety?

President, Australia, France, Spain, Sweden, Netherlands, Italy and Japan, countries that have qualified for the World Cup Finals, have all implemented random breath testing for a long time. More than 70 countries in the world are also in the process of implementing the measure. This subject was also discussed in the Council in relation to an oral question last month. However, regarding the implementation of random testing in Hong Kong, the Government has pointed out that some people worry that it might infringe human rights, the police would abuse their power and traffic would be affected by the setting up of roadblocks. I hold that concern and attention should be paid to these issues. The DAB announced yesterday the result of a survey that had been conducted to gauge public opinions in these areas. We interviewed 1 200 members of the public. The result was that 78% of the respondents "agreed" to empower the police to conduct random alcohol tests. This ratio is quite high. 68% of the respondents did "not worry" that the human rights of the randomly checked would be infringed. And only 13% of the respondents were of the opinion that this "would" happen. As to whether there would be abuse of police power or resultant traffic congestion, more than 50% of the respondents indicated that they were not worried.

Human rights are important, of course, but human rights are not boundless. Every motorist has the right to drink or even get drunk. Every motorist has the right to drive, but no motorist has the right to drive under the effect of alcohol, still less the right to endanger public safety. Random testing has been implemented even in those countries which attach the greatest importance to human rights, for example, Norway, Sweden and Netherlands. Why is our Government still hesitating? Of course, in implementing the measure, the internal guideline of the police must be strictly adhered to so as to avoid any abuse of power. But with proven experience in foreign countries, I trust that given the good quality of our police and the sense of civic responsibility of the public, there is no difficulty in implementing the measure. It would not be surprising at all if there are arguments. But it is most imperative that the new measure be introduced to save some innocent people from becoming future victims.

President, my motion seeks to urge the Government to review the existing penalties, step up publicity and education. But most importantly, it is hoped that the Government will study the introduction of random breath testing, so that the public and this Council may conduct discussions as soon as possible. I strongly believe that the setting up of roadblocks and conduct of random alcohol tests will definitely reduce drink driving. I urge Members to support my motion for the sake of public safety. Thank you, President.

Mr LAU Kong-wah moved the following motion: (Translation)

"That, as many motorists are not alert to the danger of drink driving, serious traffic accidents caused by drink driving have occurred frequently in recent years, posing a serious threat to the safety of other road users, this Council urges the Government to step up publicity and education, review the deterrent effect of existing penalties for the drink driving offence, and study amending legislation to empower the police to conduct random roadside screening breath tests on motorists, so as to strengthen its efforts in combating drink driving and enhance motorists' alertness to the danger of drink driving, thereby reducing traffic accidents caused by drink driving and safeguarding public safety."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LAU Kong-wah be passed.

PRESIDENT (in Cantonese): Mr Andrew CHENG will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

PRESIDENT (in Cantonese): I now call upon Mr Andrew CHENG to speak and move his amendment.

MR ANDREW CHENG (in Cantonese): Madam President, I move that Mr LAU Kong-wah's motion be amended.

Madam President, when the television or the radio is turned on, viewers and listeners will be deeply impressed by the publicity wording "Alcohol causes lifelong harm to people" in the Government's Announcement of Public Interest (API). However, we would still hear from time to time that many serious traffic accidents are related to drink driving. Madam President, some motorists do not have in mind the warning of the API and even underestimate such harm.

Quite a large number of drink drivers often think that accidents will only happen to other people. These people in general overestimate their own

knowledge of the roads and their vehicles but underestimate the effect of alcohol on them. Therefore, for this motion debate today, what the Democratic Party wish to strike home is a considerably serious warning to those people who have drunk before starting their vehicles and are prepared to drive and cause potential hazards to road safety: Please think twice about the penalties against drink driving.

The Democratic Party has put forth a three-part proposal for combating drink driving. Firstly, a suspension of driving licence for not less than one year; secondly, mandatory requirement of attending a course to improve driving behaviour; and thirdly, taking of a test for the reissue of driving licence. On the one hand, the heavier penalties would make potential offenders think before breaching the law about the additional trouble so caused. Secondly, it is most important that they be mandatorily required to attend some courses to improve their driving behaviour. We regard these several measures as a trilogy and hope that it can solve the problem at root.

As indicated by government information, the average yearly casualty rate of drink driving accidents is 22.4%, which is almost six percentage points higher than the average yearly casualty rate of all traffic accidents, which stands at 16.6%. Undoubtedly, we must look seriously at the harm done by drink driving. The price of inappropriate driving after a drinking party could be the eternal grievance of a family or unhappiness for the entire lifetime of an individual. Therefore, the Democratic Party holds that to combat drink driving, besides the proposals raised in the original motion, consideration should also be given to the three-part proposal just put forth by me, so that focus is put on making motorists think about the serious consequences of drink driving. Upon being punished, they will have their driving licences cancelled, have to attend a course and take a test for the reissue of their driving licences. This would cause them to exercise restraint and to think twice, thereby avoiding the lost of one or more lives. It is also hoped that innocent casualties can be reduced.

Regarding the experience of other countries, the penalty adopted by a large number of places for a first offender of drink driving is suspension of the driving licence for a period ranging from not less than three months to two years. These countries include Australia, Singapore, Canada, England, New Zealand, the United States and Japan. Besides imposing fines and imprisonment, these countries will also suspend the driving licence of first offenders. On this issue,

it surprises us that Hong Kong will impose the penalty of suspending the driving licence on second offenders only. In the debate today, we are of the opinion that suspending the licence for one year is a practice worth consideration. Furthermore, we cannot tolerate this kind of bad driving behaviour just because these people are first offenders, as the traffic accident caused even by one who breaks the law for the first time can be very serious.

Madam President, according to the existing legislation, a driver who is convicted of a scheduled offence of the Road Traffic (Driving-offence Points) Ordinance will incur five or more driving-offence points, and the Court may order the driver to attend a driving improvement course as one of the penalties. The driver may also attend the driving improvement course on a voluntary basis. However, unless the Judge explicitly states that the course must be attended, attendance is not mandatory, and as the module on driving improvement only forms part of the entire course, it may not be effective in admonishing drink driving offenders and may not be able to cause them to become deeply aware of the harm of drink driving.

Therefore, the Democratic Party proposes that all offenders should be mandatorily required to attend the driving improvement course no matter on first or subsequent conviction. In addition, these courses should also be specially designed for people who have committed such an offence, with the focus placed on allowing them to recognize the harm of drink driving to the community.

Madam President, in order that motorists would not drive after drinking, a system of retesting should also be introduced. Besides attending the driving improvement course mentioned above upon cancellation of the driving licence, the motorist must take a new driving test for resuming the qualification for driving, and his licence will be reissued only if he passes the test.

Recently, the Democratic Party conducted a telephone interview to gauge the opinion of respondents on the proposals mentioned above. The result was that almost more than 60% to 70% of the respondents were very agreeable to the trilogy proposed by us for combating drink driving.

In addition, we noted from the cross-tabulation analysis that compared with persons without a driving licence, a higher percentage of persons holding a driving licence agreed to the various proposals mentioned. This obviously shows that the latter understand that although they are law-abiding, if there are

people who are not so or drive after drinking, road safety will also be greatly affected.

Madam President, regarding the proposal for the police to conduct random roadside alcohol tests on motorists as suggested in the original motion, while indicating agreement to this proposal, the Democratic Party also hopes that the amendment also requires, as the existing Road Traffic Ordinance does, that the police should have a certain degree of reasonable doubt. Therefore, our proposal is that after randomly stopping a vehicle, if there is adequate reason for doubt about the driver, for example, it is seen that he is carrying a heavy smell of alcohol or flushing all over, the police can require him to undertake the alcohol test. Comparatively speaking, this can also ensure that those who drive after drinking will be detected through the random testing conducted on the grounds of reasonable doubt.

In order to pre-empt the occurrence of an increasing number of accidents or even serious traffic accidents caused by drink driving, we hope that the motion and the amendment today can make possible further discussion and amendment proposals on the provisions of the Road Traffic Ordinance that the alcohol test is to be conducted only when there is reasonable doubt or when a traffic accident has occurred. We hope that the proposals raised by us can make motorists on the one hand understand that upon being found drink driving, besides facing the consequence of cancellation of driving licence, they have to spend a great deal of time before their qualification for driving is resumed, so that those who have drunk will really think hard about it before driving. They should also understand that they may be randomly tested or stopped for testing. It will be very easy for the police to detect whether the alcohol content has exceeded the limit.

The various measures mentioned above are premised on the hope to safeguard road safety and protect road users, to make everybody aware that drink driving not only endangers the driver himself, but also brings many great obstacles and regrets to society and other road users.

With these remarks, Madam President, I beg to move.

Mr Andrew CHENG moved the following amendment: (Translation)

"To delete "and" after "existing penalties for the drink driving offence,";
to add ", including drawing on the practice in other countries of

suspending the driving licences of drivers on first conviction of the offence, and making it a mandatory requirement that the offenders must attend a driving improvement course to improve their driving habits, as well as to pass a driving test before driving licences are reissued to them, and" after "study amending legislation"; and to add "stop checks on vehicles and, where there is reasonable doubt," after "to empower the police to conduct random"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr Andrew CHENG to Mr LAU Kong-wah's motion, be passed.

MR CHEUNG HOK-MING (in Cantonese): Madam President, I trust all of us are not unfamiliar with the saying "Life has no take 2". However, it seems that no one bears in mind the fact that drink driving can take the precious life of oneself or other people. This is to some extent reflected by recent press reports on the numerous cases of serious traffic accidents with casualties caused by suspected drink driving and the fact that the number of such accidents has stayed at similar levels over recent years with no significant reduction. Among these serious traffic accidents, the one in which drink driving caused two deaths and three injuries at Wylie Road, Ho Man Tin on 21 May should be fresh in our mind. In this fatal accident, a motorist suddenly lost control of the saloon he was driving along Wylie Road in the early morning. The car ran into the opposite lane and crashed into a taxi. Because of the tremendous impact, both the driver and the passenger of the taxi died very unfortunately from serious injuries.

Another case which deeply impressed me is the one that involves a doctoral student of medicine, which was heard by the Court in late February. It happened that the private car that he was driving along the section of Lung Cheung Road near Tin Ma Court in May 2005 crashed into a motorcycle and he fled the scene. The driver of the motor cycle was certified dead upon arrival at hospital. At that time, the doctoral student admitted to be drink driving but denied other charges that included causing death by dangerous driving, and so on. In its closing submission made in the Court, the prosecution forcefully pointed out that there was no reason that the defendant, being a doctoral student of medicine, was unaware of the effect of alcohol on motorists. But in the end,

in view of the contradictions in the statements of the two witnesses of the case, the Magistrate hearing the case considered that there was insufficient evidence and only sentenced the doctoral student to a fine of \$6,000 and six months' suspension of driving licence for the offence of drink driving, for which he had admitted.

The fatal accident mentioned above makes me doubt very much about the mentality of those people who drive after drinking. Is it because they are so confident of themselves that they strongly believe that they can remain clear-headed after drinking and drive faultlessly without causing any traffic accident? Or is it because they seek convenience and trust to luck that they do not hesitate to drive after drinking without giving any regard to the lives and safety of themselves and other people?

Madam President, no matter what the answer is, I feel that drink driving is a very selfish act. In the event that a serious traffic accident is caused by drink driving, the consequence is very serious. Not only the driver's own life is lost, but the lives of others will also be lost. In addition, irremediable harm will be done to the family of the killed. Therefore, it then came to me that was it because the existing legislation on drink driving and drunk driving did not have sufficient deterrent effect. However, upon going through certain information, I found that although the authorities had tighten up legislation on drink driving, traffic accidents of this kind were still very large in number and could not be reduced. I believe the Government should review again the feasibility of raising the level of penalty against drink driving.

In particular, the authorities should punish with severity drink drivers who cause traffic accidents with casualties and consider dealing with such cases by imposing a higher penalty similar to that for causing death and injury by dangerous driving. Besides, the DAB holds that the Administration should step up enforcement, especially amidst the recent World Cup heat when a large number of soccer fans will frequent the bars to watch the games and the possibility of soccer fans drink driving for the sake of convenience cannot be ruled out.

In addition, I think that publicity and education is also very important, and the relevant education must be strengthened and focused on pointing out the fact that drink driving can result in irremediable consequences or even eternal sorrow. Some adverse publicity, like those pointing out that smoking is

hazardous to health and is likely to cause serious ailments such as cancer and heart disease, should be conducted with a view to alerting and reminding motorists to refrain from drink driving so as to avoid bringing harm to themselves or other people.

Moreover, the Government should take measures to further strengthen education, including enhancing the content related to drink driving in driver training and driving improvement courses. Messages such as not to drive after drinking may also be conveyed in activities promoting "Smart driving".

With these remarks, Madam President, I support Mr LAU Kong-wah's motion.

MR WONG KWOK-HING (in Cantonese): Madam President, it will be the great Father's Day three days from now. However, LAU Nga-lai, the daughter of the taxi driver who died in a traffic accident caused by drink driving on 21 May, will not be able to celebrate Father's Day with her father. Miss LAU has issued an open letter to urge motorists to learn this lesson paid for in her father's blood. Every word of hers spells sorrow and calls for deep thoughts. She said in the letter, "My father died victim of the drink driving accident. Being a driver by profession, he understood that a clear head was essential for driving. However, due to the neglect of this important point by someone else, it is impossible for my father to make any accusation today. The accident has happened. With this letter, I really hope to alert and urge all motorists in Hong Kong not to drive after drinking for the sake of the safety of themselves and other road users. Don't cause any more family to lose their loved ones! Finally, I also hope that the Government will spend more effort in combating drink driving offences." (End of quote)

Madam President, the Transport Department's information indicates that in 2004 there were in total 15 026 cases of traffic accidents in the territory, among which 97 cases involved casualties caused by drink driving. In replying to a question of this Council, Secretary Dr Sarah LIAO indicated earlier that in 2005 there was a total of 85 traffic accidents with casualties caused by drink driving. It seems that the figure is not too high, but it is worth noting that all of these accidents caused casualties. And what is the number of cases that did not cause casualties? Moreover, what is the number of cases of drink driving that did not cause any accident?

Basically, self-discipline on the part of drivers should be coupled with penalties in order that accidents can be avoided. Presently, although the Government has produced video and audio APIs, designed slogans and organized seminars, but how effective are they? Recently, the territory is overwhelmed by the World Cup heat, and it is only now that we begin to find the Government distributing publicity leaflets in individual districts where restaurants and bars stand in great numbers. Is such work persistently carried out on normal days?

In fact, many countries will conduct roadside random alcohol breath tests. As a result, it is found that the overall number of traffic accidents has been reduced by 20%. Why does the Government not consider drawing reference from the experiences and practices of foreign countries? I would also like to put forth a proposal here. It is hoped that the Government will consider conducting random alcohol breath tests in districts where bars stand in great numbers. This will be the right measure to stop members of the public who have had a wild time in the bars and intend to drive from trying to break the law. It can put the Government's publicity slogan "Don't drink before driving" into effect.

Madam President, drink driving often causes serious casualties. In addition, presently drug driving (that is, driving after taking drug) will also result in occurrence of accidents. A motorist's mental condition will be affected no matter for what reason he takes drug. It will be very dangerous if the motorist insist driving in such a mental state. In fact, the Government should consider raising the penalties.

On the subject of penalties, the existing penalties for drink driving are a maximum fine of \$25,000 and imprisonment for three years with 10 driving-offence points accorded as well. Can adequate deterrent effect be achieved by this penalty level? The occurrence of a large number of accidents has actually provided the answer, that is, adequate deterrent effect cannot be achieved. Both the motion and the amendment have been moved in the hope that the Government will review the existing penalties. Will the Government consider including the cancellation of driving licence in the penalties? I have discussed with professional drivers about the relevant issues just mentioned. They generally support raising the penalties as this can reduce the danger faced by professional drivers. I quoted earlier from the letter of a Miss LAU. The father of Miss LAU, a driver by profession, lost his life in the drink driving accident mentioned above. The recent traffic accident at Ho Man Tin was

similar in nature. Therefore, upon repeated occurrence of such incidents, I have requested the relevant panel of this Council to conduct discussions on this. At the end of last month, the panel included the matter on its agenda. I hope that in response to the motion debate today, the Government can raise the penalties to combat drink driving, thereby deterring irresponsible motorists and safeguarding the safety of the public and all drivers. Thank you, Madam President.

MR LAU WONG-FAT (in Cantonese): Madam President, facts speak louder than words. A spate of horrific and fatal car accidents involving drink driving that occurred late at night and in the small hours underscores far more emphatically the serious situation of drink driving in Hong Kong than any article or speech. The truth is that drink driving is becoming increasingly rampant, yet the existing relevant measures adopted by the Hong Kong Government, including publicity and education, prosecutions and even penalties, have all proved to be ineffective in cracking down on and deterring this serious offence.

Cases of drink driving and drink driving causing serious injuries and deaths are on the increase and this is really a cause for concern. I believe that the horrific accident which happened two years ago, in which the vehicle driven by a drunken driver hit a traffic police officer on the Gascoigne Road flyover, sending the officer down the flyover to his death, was still fresh in Members' minds. Last month, within days of my asking a question about drink driving in the Legislative Council, another two outrageous and tragic drink driving accidents happened. The one that can be considered outrageous happened in Yuen Long and involved the collision of three cars. The three drivers involved were all found to have drunk alcohol and the levels in two of them were found to have exceeded the prescribed limit. The one that can be considered tragic involved a vehicle driven by a drunken driver which rammed into a taxi, leading to the death of the taxi driver and his female passenger. Furthermore, a drunken man whose licence had been suspended was alleged to have driven his car in the wrong direction. When he was intercepted by police officers, he was alleged to have punched them.

If all these terrifying accidents leading to the death and injury of innocent members of the public still cannot wake the Administration up and identify inadequacies, the attitude displayed by the Government is in fact no different from drink driving, and it similarly makes us feel equally scared.

Madam President, as long as the authorities have the will and determination, how can they possibly be powerless in tackling drink driving? One approach is to actively step up publicity and education concerning the harms of drink driving, another approach is to conduct random checks all out and prosecute offenders vigorously. On this point, the original motion proposes amending the legislation to empower the police to conduct random tests on motorists and I absolutely agree with this. If the legislation is not amended now, how long do we have to wait?

Apart from this, I believe that the most crucial solution to tackling drink driving is to increase the penalties substantially. In view of the gravity of drink driving offences, I can by no means agree with the comments of the officials in charge that the existing penalties are already quite heavy. For example, in the incident cited by me, in which the police officer was knocked down by the vehicle driven by the drunken man, the defendant was only sentenced to 32 months of imprisonment. Knocking down a police officer on duty who was in his prime and who had bright prospects, thus leading to his tragic death, only incurred an imprisonment of less than three years for the person causing the accident. I believe that not only did such penalties fail to right the wrong done to the victims or make justice prevail, they will also not have any deterrent effect on other people.

Madam President, I must point out that incidents involving drink driving cannot be considered as accidents at all, since consuming alcohol beyond the prescribed limit, thus causing collisions, injuries and deaths, are entirely predictable, so how can they be considered accidents? Moreover, before drivers drink, they should already be fully aware of the serious consequences of drink driving and that people's lives will be put at risk since accidents can happen at any time. One has to know that vehicles controlled by drunken drivers are "weapons of mass destruction" that can cause serious deaths and injuries at any time in the streets. I believe that it is not excessive to regard drink driving as a kind of terrorist activity and anti-drink driving is in fact another type of anti-terrorism. It is said that a chaotic situation warrants draconian measures. It is similarly necessary to take draconian measures against these irresponsible people who have no regard for other people's lives and drive after drinking. In this connection, when discussing the relevant issues during the Question Time of the Council meeting on the last occasion, I suggested amending the maximum penalties for drink driving causing serious injury and death to revocation of licence for life and a charge of manslaughter, which carries the maximum penalty of life imprisonment.

Madam President, on this issue of drink driving, it is now time the SAR Government showed its "strong governance for the people". How much longer do we have to wait?

With these remarks, I support the motion.

MR LI KWOK-YING (in Cantonese): Madam President, drink driving is a criminal offence in Hong Kong and for first offenders, the minimum penalties include incurring driving-offence points and the suspension of driving licence and the maximum penalties include the imposition of a fine and three years of imprisonment. However, it is really doubtful whether these penalties really have a deterrent effect on motorists. In recent years, the number of accidents resulting from drink driving in Hong Kong did not register any significant decrease. In the first four months of this year alone, the number of prosecutions already stood at over 400 cases, representing an increase of 15% over the same period in 2005. It is evident that there is a genuine need for the authorities to review the existing penalties for drink driving and step up law enforcement, publicity and education to make improvements to the situation of drink driving.

Drink driving is a very serious offence and it attracts a great deal of attention not just in Hong Kong but also overseas. According to the accident survey conducted by the World Health Organization (WHO), about 50% to 60% of the traffic accidents are related to drink driving, for this reason, the WHO cited drink driving as the primary cause of death in traffic accidents a long time ago.

In fact, even in the absence of the figures from any special survey, no one will dispute the danger of drink driving. Since we all agree that drink driving is so dangerous and such behaviour is detrimental to oneself as well as others, furthermore, since it is also an offence, why do so many people still take such a risk and break the law? This is probably due to the conflicting mentality of motorists. On the one hand, they agree that drink driving is a very dangerous act and, on the other, various factors have driven them to run the risk of drink driving. The DAB conducted a survey on the awareness of drink driving in 2004 and found that over 70% of the respondents considered drink driving to be very dangerous, however, over 26% of the respondents also said that they had the experience of drink driving. The survey results fully show the conflicting mentality of motorists about drink driving.

Generally speaking, motorists have an excessively high opinion of themselves and this is a major reason leading to drink driving. Some people think that they can drink a lot without getting drunk or they can still be sober after downing a thousand glasses, so to speak, so it should not be a problem even if they drive after drinking. They even believe that they have superb driving skills and can remain highly alert even if they drive after drinking, and that they will not affect other vehicles or pedestrians along the way. In fact, the reality is that there are many scary and dangerous encounters which are the precursors of a lot of fatal traffic accidents. Often, in television programmes, we often see that some drivers who drink drive were not detected by the police or were lucky enough to escape prosecution, or were so blessed by their lucky stars that no traffic accident happened. However, in reality, precisely because motorists have such a mentality of being lucky and of getting away, thinking that drink driving once or twice will not be so easily detected that they have the daring to breach the law.

However, motorists often overlook the fact that drinking and driving are in fact a deadly combination. Even if only a little alcohol has been consumed, the likelihood of a traffic accident happening is over two times higher than not drinking any alcohol. The effects of alcohol on the human body are not purely superficial. When the concentration of alcohol in the blood reaches a certain level, the responsiveness of a motorist to the external environment and his ability to control his vehicle, in particular, the ability to cope with emergencies, will drop. Furthermore, since the constitutions of people are different, the time when alcohol will begin to have an effect on them will also differ. If the effects of alcohol are felt while one is driving, the consequences will be unimaginable.

What is even more worrying is that many motorists lack an adequate understanding of the effects of alcohol on the human body. They commonly think that coffee, strong tea, soda water and the like can counter the effects of alcohol. In other words, they think that as long as they have taken such beverages, the effects of alcohol on driving will not be very pronounced. However, the fact is that such beverages cannot lower the concentration of alcohol in blood and at the most, they can only hydrate the body of the people who have consumed them. Since some motorists have an incomplete understanding of countering the effects of alcohol, the Road Safety Council, when launching publicity and education campaigns to prevent drink driving, should consider co-operating with other departments such as the Department of

Health to impart accurate knowledge concerning alcohol, so as to rectify the mistaken concepts of motorists on countering the effects of alcohol and prevent them from thinking that they can take steps on their own to reduce the alcohol level in their bodies and then take the risk of drink driving.

Recently, the quadrennial World Cup Finals have begun and I believe many football fans will frequent such places as pubs late at night to watch the football matches. Originally, there is nothing to worry about if members go to pubs in groups to watch the matches as they drink. Originally, this is only a past-time that should give no cause for concern. However, according to police figures, during the month in which the World Cup Finals took place in 2002, a total of five traffic accidents occurred as a result of drink driving in Hong Kong. This really arouses concern as to whether tragedies resulting from drink driving during the period in which the World Cup Finals are held will witness a deterioration.

At present, random breath tests are conducted in 74 countries worldwide to combat drink driving. However, the local police have no power to request drivers to conduct random breath tests. In general, the police can only request the motorists concerned to conduct breath tests by judging whether their eyes are bloodshot, whether they have cut lanes carelessly and whether they smell of alcohol, however, the hit rate is not high. During the last extended public holiday, the police requested 180 motorists to undergo breath tests but only 20 of them were found to have exceeded the prescribed limit.

In view of this, can the authorities follow the example of these overseas countries and conduct random breath tests? As the recent survey conducted by the DAB reveals, nearly 80% of the respondents believe that Hong Kong should follow overseas examples and authorize the police to conduct random breath tests. Since this measure has the support of the public, why do we not seize this opportunity and implement it?

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

MS MIRIAM LAU (in Cantonese): Madam President, as we all know, it is extremely dangerous to drive after drinking because the reduced consciousness and power of judgement of the driver may easily result in traffic accidents,

causing the death or injury of the driver and even other innocent people. As a matter of fact, we often hear of how drink driving caused traffic accidents that led to casualties. Last month, the private car of a driver suspected of drink driving collided head on with a taxi. The private car driver and his passengers narrowly escaped with their lives, but the innocent taxi driver and his female passenger were both killed. This accident really gets our hackles up.

Drink driving is much more serious than other traffic offences. Other traffic offences may just be the consequence of drivers' momentary oversight, and there are invariably all kinds of road conditions that are beyond the control of those behind the wheel. But drink driving is completely different in nature. Before a driver gets behind the wheel, there is always enough time for him to think carefully. Momentary oversight can be no excuse. And, it is also absolutely possible for the driver to control his own behaviour. He can either refrain from driving after drinking or refuse to drink before driving. Unfortunately, many drivers still think that they can get through it somehow. They have excessive confidence in their driving skills and thus insist on driving after drinking, telling themselves that they will not run into any accidents, and that nothing will happen.

The Secretary for the Environment, Transport and Works maintains that the penalties for drink driving are already very heavy. But according to the statistics supplied by her Bureau, the number of prosecutions against drink driving actually rose incessantly from 649 in 1996 to 1 335 last year. In the first four months of this year, there were already 448 prosecutions, showing an increase of 15% over the figure for the corresponding period in 2005. The trend of increase is indeed very worrying. All these soaring figures also indicate that the existing penalties for drink driving are clearly not deterrent enough.

Currently, a driver convicted of drink driving for the first time will only incur 10 driving-offence points if the traffic accident did not cause any casualties. There will be no immediate suspension of his driving licence, so the deterrent effect is clearly not strong enough. Actually, the Government may consider the possibility of first requiring such drivers to attend driving improvement courses, so as to combine education and punishment. In the United States, convicted drivers are all required to attend such courses, the durations of which will depend on the extent to which the alcohol limit is exceeded. In other words, if the case

is serious, the improvement course will be of a longer duration. But if the case is not so serious, the course will be shorter. When it comes to the proposal of suspending the driving licences of first-time offenders, the Liberal Party must first express its support for heavier penalties in general. But I must still raise one point here. Currently, the alcohol concentration limit prescribed in Hong Kong is already very strict. A driver commits offence if he exceeds the limit of 50 mg of alcohol per 100 ml of blood. Such an alcohol concentration limit is even stricter than those adopted in such countries as the United Kingdom, the United States, New Zealand, Canada and Singapore. For this reason, it may be open to question as to whether we should suspend the licence of a driver when there is just a very mild excess, as when there are 51 mg of alcohol per 100 ml of blood. This question must be considered carefully. But, in order to increase the deterrent effect, the Government may still draw on the international practice. This means that once the alcohol concentration limit is exceeded up to a prescribed extent, such as 80 mg of alcohol in 100 ml of blood, licence suspension should be imposed. And, as the extent of excess increases, heavier penalties and longer periods of licence suspension can be imposed. This idea merits our consideration.

Besides, since the consequences of drink driving can be very serious, prevention is more important than staging prosecutions afterwards. But under the existing legislation, the police are empowered to demand a screening breath test of a driver only when the driver is involved in a traffic accident, or has committed a traffic offence, or is suspected of having consumed alcohol, as when he is found driving in an unstable manner. The police are not empowered to conduct any random checks. In the past, when the Government put forward proposed legislative amendments or at the meetings of the Panel on Transport, we did repeatedly raise this problem for discussion. But whenever the idea of random checks was raised, some would invariably argue that this might constitute a violation of human rights. I think we must really ask ourselves, "Which should be more important to us — human rights or human lives?" Members must all consider this question.

During the Easter holidays this year, the police demanded a screening breath test of 190 motorists. Twenty of these motorists were found to have exceeded the alcohol concentration limit. In other words, one in every 10 motorists who were demanded to undergo a screening breath test was involved in drink driving. The gravity of the situation is thus very clear. I believe that if

the police are empowered to demand random screening breath tests of drivers, the number of drivers exceeding the alcohol concentration limit may be far greater.

Actually, it can be said that it is now an international trend to empower the police to demand random screening breath tests of drivers. Currently, measures of this nature are implemented in many countries such as China, the United Kingdom, the United States, Canada, Australia, France, Sweden, Belgium, the Netherlands and New Zealand. In the case of the United States, for example, the police are not empowered to erect any roadblocks to intercept vehicles without any reasonable grounds. But random checks for drink driving are an exception. In a number of Canadian provinces, the police are given even greater power to clamp down on drink driving. Besides erecting checkpoints to stop and check drivers for drink driving, the police are also empowered to interrogate drivers on the quantities of alcohol consumed and to conduct breath tests on them.

Some may think that drink driving is not such a serious offence. But the many accidents that have occurred so far show clearly that drink driving can easily take away the lives and properties of drivers themselves as well as other road users. This explains why in many countries, the police are empowered to demand random tests of drivers. Once drivers know that even if they do not commit any traffic offences, they may still be intercepted and required to undergo a breath test, they will cease to think that they may get away with it somehow. They will then constantly remind themselves that they must never drink before driving.

With these remarks, Madam President, I support Mr LAU Kong-wah's original motion.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no, Mr LAU Kong-wah, you may now speak on Mr Andrew CHENG's amendment. You have up to five minutes to speak.

MR LAU KONG-WAH (in Cantonese): President, Members may want to hurry home to watch the World Cup matches. (*Laughter*) They may want to hurry home, but this motion topic is extremely important. Many Members have spoken, but I still wish to say a few words on Mr Andrew CHENG's amendment in particular.

I believe that our motion and Mr Andrew CHENG's amendment actually aim to achieve the same goal. Everyone wants to reduce the number of accidents and hopes that the legislation can be amended as soon as possible, so as to produce a deterrent effect on motorists. Admittedly, the "trilogy" advocated by Mr Andrew CHENG, that is, the triple procedure of licence suspension, driving improvement courses and driving tests for licence reissuance, can indeed achieve a greater deterrent effect and thus merits our discussion.

As indicated by our survey, the existing penalties are already very heavy and many motorists also consider drink driving a very serious offence. I therefore agree that there are already heavy penalties and ongoing publicity and education. But the crux is that there is a lack of preventive measures. In particular, the sentences passed by Judges are much too light. This also merits our concern.

The second part of Mr Andrew CHENG's amendment proposes to "to empower the police to conduct random stop checks on vehicles and, where there is reasonable doubt, to conduct random roadside screening breath tests on motorists". We have some reservations about this point, because if we accept the idea of random stop checks on the one hand but insist that a test can only be conducted where there is reasonable doubt on the other, we will be contradicting ourselves. If a test can be conducted only when there is doubt, it is no longer a random stop check. I do understand that in many foreign countries, a test is not necessarily prompted by any doubt. A random stop check is a random stop check and once stopped at random, a motorist must undergo a test. If the checking for problems is still required after a motorist has been stopped at random, all sorts of disputes may arise as a result of subjective judgement. In contrast, if a test is conducted forthwith after a motorist has been stopped at random, the incidence of disputes will be minimized.

What is more, as I have pointed out, the exercise of subjective judgement may in many cases result in the "escape" of those with a high tolerance of alcohol.

I am talking about those who can drink a whole bottle of "maotai" without seeming to be intoxicated. It is impossible to notice their intoxication, so there are more controversies here. The existing legislation already provides that the police can conduct a random stop check where there is reasonable doubt. Consequently, the addition of this proposal will only bring us back to the existing legislation. Therefore, there is really not too much to study when it comes to the existing legislation. Since the proposed practice is already implemented, we do not think that we can render our support.

I am well aware of the human rights issue. I know that this will be a new measure and I am fully aware of the significance of human rights. This morning, a survey was conducted during the Radio Television Hong Kong programme "Talkabout". I subsequently listened to the webcast of the programme and found a number of wonderful comments made by listeners. And, I also notice that most listeners support my motion. One listener said, "It is legal, sensible and reasonable to step up random stop checks for drunk drivers because the police are empowered under the law and have the intelligence to prevent such crimes. For this reason, the flaunting of human rights as an excuse is nothing but an insult to and disrespect for all law-abiding citizens." Another listener remarked, "Why should a citizen who is law-abiding in every respect show any concern at all? It is the duty of every citizen to offer support, and all arguments about any resultant nuisance are just the excuses invented by criminals or would-be criminals." I think his comment is nicely put. Another listener who has been living in Australia for a long time commented, "I am living in Australia and I have also lived in New Zealand for quite some time. Combating drink driving is the main emphasis of the traffic police of both places. Every Friday and weekend, roadblocks will be erected for alcohol tests. I personally do not see any violation of human rights. And, no local people have ever raised any objection." Such are the voices of the public.

For all these reasons, President, I think my motion should really merit the Government's consideration. The Government should submit the necessary legislative amendment to this Council for discussion as soon as possible. Thank you, President.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): I have heard a number of Members make many valuable suggestions concerning the enforcement of drink driving laws and the

punishment for drink driving. In fact, all of these views aim to enhance the deterrent effect by means of detection and the imposition of penalties and their aims are identical.

In the past five years, the number of traffic accidents that led to casualties as a result of drink driving averaged about 86 each year and accounts for 0.6% of all traffic accidents. Although, when compared with other types of traffic accidents, the proportion of accidents involving drink driving does not seem to be particularly high, should an accident of this nature happen, the resultant casualties are in fact more serious. Therefore, we have always attached great importance to the problem of drink driving and taken law-enforcement actions and launched publicity campaigns actively to combat drink driving.

The drink driving legislation was enacted in 1995. Under section 39 of the Road Traffic Ordinance, it was an offence for a person who drove with an alcohol concentration exceeding the prescribed limit of 80 mg of alcohol per 100 ml of blood. To increase the deterrent effect, we further tightened the prescribed limit from 80 mg to 50 mg of alcohol per 100 ml of blood in 1999. When compared with other overseas countries, we are one of the places with the most stringent prescribed limit.

However, in the discussion that took place just now, some Members are of the view that the penalties are inadequate and do not pose sufficient deterrent effect. We have considered and referred to overseas experience and found that the current penalties in Hong Kong are comparable to those in overseas countries. In order to increase the deterrent effect, we will consider if the licences of first offenders convicted of drink driving should be revoked. In this regard, we will first listen to the views of the public.

Regarding the proposal requiring drivers whose licences have been revoked to take driving tests again before reissuing driving licences to them, this measure will of course cause a great deal of inconvenience to such drivers and increase the deterrent effect, however, drink driving involves drivers' attitude, not their driving skill or ability to control their vehicles. Therefore, we believe that it is drivers' driving attitude that warrants improvement and it will be more effective to require them to join driving improvement programmes. According to the existing legislation, the Court can order drivers who have been convicted of drink driving and incurred 10 driving-offence points to enrol on driving improvement courses. We will consider making it mandatory for drivers who

have been convicted of drink driving or other serious driving offences to enrol on driving improvement courses, so as to educate drivers of the correct driving behaviour and attitude.

The police have been taking active enforcement actions against drink driving. They are particularly vigilant and would conduct large-scale enforcement operations against drink driving in the night-time and early morning, as well as during festivals and holidays. In fact, the number of drink driving prosecutions increased from 649 in 1996 to 1 335 in 2005. The number of prosecutions in the first four months of 2006 already amounted to 448, representing an increase of 15% over the same period in 2005. The increase in cases is attributable to the stepped-up law enforcement.

Currently, the police are empowered to require a person to provide a specimen of breath for the screening test in the following three conditions: first, if he is involved in a traffic accident; second, a driver commits a moving offence and third, the police have reason to suspect the driver of drink driving. In view of this, the proposals set out in Mr Andrew CHENG's amendment are already current practices, for example, if the police set up a roadblock to stop vehicles and suspect a driver of drink driving, the police can require the driver concerned to pull over for a short while to take a breath test.

Regarding Mr LAU Kong-wah's suggestion that we explore empowering the police to conduct random breath tests, we understand that the practices in various countries are different. However, random breath tests are conducted in many countries. In past discussions, Members and the public were very concerned about such issues as police power, human rights and public acceptance in allowing the police to require a driver to provide a specimen of breath. If the present arrangement is further relaxed to allow the random stopping of vehicles to require drivers to provide breath specimens, we have to study this carefully and the public has also to be consulted. We believe that with a more mature understanding of human rights and police power in society, this issue can be further explored. In addition, it will also be necessary to solve some operational problems in implementing random breath tests, for example, the time it takes to conduct the tests, deciding on which roads to set up roadblocks, whether unnecessary traffic congestion will be caused or if this will lead to confrontation between the police and members of the public. These issues have to be considered. Furthermore, we also have to examine carefully if the actions to be taken after conducting random tests should be the same as those on drivers

who are caught while on the move. We are happy to see Members express their support in this regard and we will examine this matter again.

On educating the public, we have been making joint efforts with the Road Safety Council in organizing publicity campaigns and talks, and distributing leaflets to motorists and the transport trades. We also broadcast Announcements of Public Interest on the television and radio regularly to highlight the serious consequences of drink driving and remind people not to drive after drinking. The police also launch publicity campaigns to tie in with their enforcement actions. Apart from distributing leaflets in areas with many bars and restaurants, they also invite members of the public to try the breath test so as to enhance the publicity effect.

During the period in which the World Cup Finals take place, the police will also step up publicity and law-enforcement actions targeting drink driving. Apart from distributing leaflets in areas with many pubs and frequented by members of the public who watch the matches, they will also pay particular attention to drivers' driving behaviour. When anyone, including any driver who has just boarded and about to start his vehicle, is suspected of drink driving, the police will require him to take a breath test.

We will continue to combat drink driving with a two-pronged approach, that is, by stepping up enforcement and carrying out targeted education and publicity activities.

We hope that drivers will exercise self-discipline. It is very important for society to be aware of the dangers of drink driving. Apart from motorists themselves, their friends and relatives should also exhort their driver friends to make them understand that drink driving will hurt other people and themselves and the consequences are very serious. Therefore, we hope that this matter will draw the attention of society. We also hope to examine together with the Legislative Council how the deterrent effect can be enhanced to reduce the dangers associated with drink driving. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That Mr Andrew CHENG's amendment to Mr LAU Kong-wah's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Kong-wah rose to claim a division.

PRESIDENT (in Cantonese): Mr LAU Kong-wah has claimed a division. The division bell will ring for three minutes, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Abraham SHEK, Ms LI Fung-ying, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Patrick LAU and Miss TAM Heung-man voted for the amendment.

Mr WONG Kwok-hing and Mr WONG Ting-kwong voted against the amendment.

Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms Miriam LAU and Mr Daniel LAM abstained.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Albert CHENG voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Mrs Selina CHOW abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 15 were present, nine were in favour of the amendment, two against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 11 were in favour of the amendment, six against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

PRESIDENT (in Cantonese): Mr LAU Kong-wah, you may now reply and you have two minute 57 seconds.

MR LAU KONG-WAH (in Cantonese): I welcome the Secretary's remark that the introduction of a new mechanism must be preceded by prudent exploration. Actually, as early as 10 years ago, this Council already started to discuss this issue, but public resistance was rather strong at that time. Now, after 10 years, the measure concerned is now implemented in many foreign countries and has proven to be effective. In the meantime, civic-mindedness in Hong Kong has also increased.

Some members of the public telephoned a radio station to discuss this topic this afternoon. The programme host remarked that maybe, the measure on combating drink driving was welcomed by pedestrians and the general public but resisted by motorists. It so happened that two of the listeners who phoned in were motorists having the habit of drinking, but they both expressed strong support for the measure. Why? The reason is that people who drink can usually realize the danger posed by drink driving. This explains why such measures are generally supported by them.

As a matter of fact, a survey conducted by the DAB showed that 70% to 80% of the respondents were in support of such measures. The surveys conducted by the Democratic Party yielded the same finding. The two political parties are thus in agreement on this topic and there should be no element of "race-rigging" this time around. The support coming from 70% to 80% of the public is in line with the spirit of strong governance upheld by the Chief Executive. Any measure commanding the support of 70% of the public should be considered. I hope that the Government can implement the measure concerned.

The Director of Audit has also joined in the arguments recently. In a newly published report of the Audit Commission, it is pointed out that in some countries, following the conduct of random roadside screening breath tests, the number of traffic accidents involving drink driving has decreased by roughly 20%. It is proposed that the Commissioner of Police should discuss with the Secretary for the Environment, Transport and Lands, and follow the measures and new technologies adopted in foreign countries to combat drink driving.

President, speaking of new technologies, I must mention that in Japan, there is a newly invented type of keys which can be used for alcohol tests. Such keys may also be used for breath tests, but they are very small in size. When a motorist blows into the mouthpiece of one such key after drinking, it can indicate the alcohol content of his blood. A red light will show if the alcohol limit is exceeded and the car engine will remain immobilized. This invention offers many advantages and is not very expensive. This is what I mean by new technologies. In the United States, such keys are also used. And, the use of them is even mandatory in the case of those with past records of drink driving. I think the Secretary may consider and encourage the adoption of such new technologies.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAU Kong-wah, as amended by Mr Andrew CHENG, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members present. I declare the motion as amended passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 21 June 2006.

Adjourned accordingly at sixteen minutes to Nine o'clock.

Annex I

FREIGHT CONTAINERS (SAFETY) (AMENDMENT) BILL 2006

COMMITTEE STAGE

Amendments to be moved by the Secretary for Economic Development and Labour

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>By adding –</p> <p>“(5A) Section 4(3) is amended by repealing “(1)(b) to (e) or (2)(i) to (iv)” and substituting “(1)(b), (c), (d) or (e) or (2)(a), (b), (c) or (d)”.</p> <p>(5B) Section 4(3)(a), (b) and (c) is amended, in the Chinese text, by repealing “應” and substituting “須”.</p>
6	<p>By adding –</p> <p>“(3A) Section 5 is amended by adding –</p> <p>“(2A) The fee payable to an authorized person in respect of an application under this section shall be –</p> <p>(a) of such amount as may be specified by the authorized person; and</p> <p>(b) payable in such manner, and within such period, as may be specified by the authorized person.”.</p>
7	<p>By adding –</p> <p>“(2A) Section 6 is amended by adding –</p> <p>“(2A) The fee payable to an authorized person in respect of an application under this section shall be –</p> <p>(a) of such amount as may be specified by the</p>

authorized person; and

- (b) payable in such manner, and within such period, as may be specified by the authorized person.”.”.

11 In the proposed section 10A(3)(a), (b) and (c), in the Chinese text, by deleting “應” and substituting “須”.

15 In the proposed section 17A(2), by deleting “term or”.

Annex II

SECURITIES AND FUTURES (AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services
and the TreasuryClauseAmendment Proposed

New

By adding -

"1A. Directions to Commission

Section 11(1) of the Securities and Futures Ordinance (Cap. 571) is amended by repealing "chairman" and substituting "chief executive officer".

1B. Accounts and annual report

Section 15(2)(b) is amended by repealing ", and one non-executive director," and substituting "and the chief executive officer".

1C. Accounts of compensation fund

Section 240(4) is amended by repealing "at least one non-executive director" and substituting "the chief executive officer".

2

By deleting the clause and substituting -

"2. Interpretation and general provisions

Section 1 of Part 1 of Schedule 1 is amended -

(a) in the definition of "executive director", by repealing everything after "means" and substituting "the chief executive officer of the Commission or any other person who is appointed as an executive director of the Commission under section 1 of Part 1 of Schedule 2 to this Ordinance (whether or not acting in any other capacity under that Part);";

(b) in the definition of "member", by repealing everything after "means" and substituting -

"-

(a) the chairman of the Commission; or

(b) the chief executive officer or any other executive director or non-executive director of the Commission (whether or not

acting in any other
capacity under Part
1 of Schedule 2 to
this Ordinance);”;

- (c) in the definition of “non-
executive director”, by adding
“(whether or not acting in any
other capacity under that Part)”
before the semicolon.”.

3

- (a) By adding before paragraph (a) –

“(aa) in the heading immediately before section 1,
by adding “, **chief executive officer**” after
“**Chairman**”;

- (ab) in section 1, by repealing “and such number
of” and substituting “, a chief executive
officer and such number of other”;

- (b) By deleting paragraphs (c), (e) and (f).

- (c) In paragraph (i) –

- (i) in the Chinese text, in the proposed
section 9 of Part 1 of Schedule 2, by
deleting “須就所有目的而言” and
substituting “就所有目的而言，須”;

- (ii) by adding –

“9A. Notwithstanding section 9 –

- (a) an executive director of

the Commission shall not
cease to be regarded as
such only because of his
acting as chairman of
the Commission; and

- (b) a non-executive director
of the Commission shall
not cease to be regarded
as such only because of
his acting as chairman
of the Commission.

**Vacancy in office of chief
executive officer**

9B. The Chief Executive may designate
an executive director of the Commission
to act as chief executive officer of
the Commission for any period during
which the chief executive officer of
the Commission is unable to act as
chief executive officer due to illness,
absence from Hong Kong or any other
cause, and may at any time revoke any
such designation.

9C. An executive director of the Commission who acts as chief executive officer of the Commission shall be deemed for all purposes to be the chief executive officer of the Commission.”.

(d) In paragraph (k), by deleting “9A.” and substituting “9D.”.

(e) By adding -

“(oa) in section 14, by repealing “or the deputy chairman” and substituting “, deputy chairman, chief executive officer”;

(ob) by adding -

“16A. For the purpose of forming a quorum under section 16 -

(a) subject to paragraph

(b), the chairman of the Commission shall be counted as a non-executive director of the Commission; and

(b) notwithstanding

sections 9 and 9A -

(i) an executive

director of the Commission who acts as chairman of the

Commission shall
only be counted
as an executive
director of the
Commission; and

(ii) a non-executive
director of the
Commission who
acts as chairman
of the

Commission shall
only be counted
as a non-
executive
director of the
Commission.";".

(f) By deleting paragraph (p) and substituting -

"(p) in section 27, by adding -

"(aa) the chief executive officer of
the Commission;";".

(g) By adding -

"(q) in section 28(a), by repealing "or";

(r) in section 28, by adding -

"(aa) the chief executive officer of
the Commission; or"..".

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Dr KWOK Ka-ki's supplementary question to Question 2**

As regards whether the five families which had moved to more affordable flats after receiving Rent Assistance for three years continuously include cases which had opted for Comprehensive Social Security Assistance (CSSA), the Housing Authority's Rent Assistance Scheme is aimed at providing temporary relief for public housing tenants who cannot afford normal rents and are not receiving any rent allowance under CSSA. None of the five families mentioned above were receiving such CSSA allowance while on Rent Assistance.