

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 27 June 2007

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.S.,
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, G.B.S., 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 WONG YUNG-KAN, J.P.

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 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 ALBERT CHAN WAI-YIP

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

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

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

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.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.

PROF 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 ANDREW CHENG KAR-FOO

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

THE HONOURABLE CHIM PUI-CHUNG

PUBLIC OFFICERS ATTENDING:

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

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

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

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 VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

PRESIDENT (in Cantonese): Clerk, a quorum is not present. Please ring the bell to summon Members to the Chamber.

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

PRESIDENT (in Cantonese): A quorum is present. The meeting now starts.

TABLING OF PAPERS

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

Papers

No. 97 — Clothing Industry Training Authority
Annual Report 2006

No. 98 — Airport Authority Hong Kong
Annual Report 2006-2007

Report on Elderly in Poverty by the Subcommittee to Study the Subject of Combating Poverty

Report of the Bills Committee on Copyright (Amendment) Bill 2006

Report of the Bills Committee on Tsing Sha Control Area Bill

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Democratic Development for HKSAR

1. **MR RONNY TONG** (in Cantonese): *President, given that Articles 45 and 68 of the Basic Law respectively provide that the ultimate aims are the selection*

of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage, will the Government inform this Council:

- (a) whether the Hong Kong Special Administrative Region (HKSAR) Government has set up any standing mechanism for regularly reporting to the Central People's Government (Central Government) on the progress of achieving the above aims, according to the actual situation of HKSAR's democratic development; if it has, of the details; if not, the reasons for that;*
- (b) whether the HKSAR Government will, before consulting the public on the Green Paper on Constitutional Development, consult the Central Government on the proposals in the Green Paper concerning the implementation of Articles 45 and 68 of the Basic Law; if it will, when it will consult the Central Government and by when the Central Government is requested to provide a reply; if not, the reasons for that; and*
- (c) how the HKSAR Government will deal with the views received during the public consultation on the Green Paper, and of the criteria and means for formulating the ultimate direction of constitutional development; whether it will take into account the Central Government's views in the process; if it will, of the weighting given to such views; if not, how it will deal with the Central Government's views?*

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

- (a) We have maintained communication with the Central Authorities regarding Hong Kong's democratic development. The Central Authorities are certainly aware of the sentiments of Hong Kong people. Under the Constitution of the People's Republic of China and the Basic Law, the Central Authorities have the ultimate power to determine the constitutional development of Hong Kong. It is our consistent position that we will not publicly comment in detail on our communication with the Central Authorities.

- (b) Regarding the issue of universal suffrage, the focus is put on the discussions within the Hong Kong community at this stage. We hope that, through publishing a green paper on constitutional development and conducting public consultation, the community will be able to forge consensus and form a mainstream view. At this stage, our emphasis is on listening to the views of the Hong Kong community. The Central Authorities are certainly concerned about the discussion of the green paper within the Hong Kong community.
- (c) During his election campaign, the Chief Executive had made it clear that he hoped that the Hong Kong community could ultimately form a mainstream view on the issue of universal suffrage. Any mainstream proposals formed should be consistent with the Basic Law, and should not require any amendments to the main provisions of the Basic Law. The proposals should also stand a reasonable chance of attracting majority support among Hong Kong people, securing two-thirds majority in the Legislative Council and being considered seriously by the Central Authorities. The Chief Executive has already undertaken to reflect faithfully any mainstream views formed during the public consultation and other views expressed to the Central Authorities.

MR RONNY TONG (in Cantonese): *President, the Secretary has failed to answer any part of the main question. President, since I can only follow up one of the points, the rest will be left to other colleagues.*

President, part (c) is the thrust of the main question, in which I asked how the views received during the consultation will be dealt with and the criteria for formulating the ultimate direction of constitutional development on basis of the views. However, the Secretary has not said a word on how the views would be dealt with. It is our wish that the Government will respect Hong Kong's mainstream view, but how is it going to deal with the views received? How will the direction be formulated? President, the Secretary has not answered all this at all.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, we actually have very objective criteria to assess the views expressed

by different political parties and groupings, organizations and individuals so as to estimate the chance of success of a proposal. For instance, first of all, we will keep a close watch on the degree of support that a certain proposal gets in different polls done by universities and organizations to see if the degree of public support will exceed 60%. Subsequently, we will look at the degree of support that the proposal gets from different political parties and groupings and Members in the Legislative Council to see if it can secure the endorsement of a two-thirds majority of all Members.

MR RONNY TONG (in Cantonese): *I am asking how the views will be dealt with. For instance, after receiving any views, how can the Government confirm that the views have the genuine support of the public at large? Will the Government conduct public opinion polls or any other kind of consultation on the views received? President, will the Secretary explain more clearly?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, this is certainly not the first time the HKSAR Government conducts a public consultation exercise, and each of them has been conducted in a most open manner. Views of either members of the public, political parties and groupings, various sectors or organizations will be thoroughly collated and an account will also be given. Just as I said earlier, views collected via different public opinion polls and the inclinations of various political parties and groupings and Members of the Legislative Council are objective facts for all to see.

MS MARGARET NG (in Cantonese): *President, it is precisely because of the bad track record of the Government that this time we have to raise questions beforehand.*

President, a government that is honest and open will definitely make public its handling method and the assigned weighting in advance, for instance, whether or not public opinion polls will be conducted and the yardstick to be used. In fact, be it consultation on the enactment of Article 23 of the Basic Law or other consultation exercises, the methodology adopted by the Government had been considered inappropriate by many academics because they were not made public beforehand. Will the Government give a clear account of how the views will be

dealt with in advance, rather than saying that people's views are respected after something has happened and then suddenly putting forward five major proposals for the public to consider by themselves? Should the Government deal with the views received by following the international standard?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, for one thing, the public consultation process is actually pretty open. After the Green Paper has been published, there is absolutely an opportunity for the Legislative Council, people from all walks of life, District Councils and members of the public to consider and give their views. Also, they are public occasions where Members and the media could observe and monitor. Upon completion of the three-month public consultation exercise, we will collate the views received and gave an account on them, on which assessment could be made. Then for another, public opinion polls have been conducted frequently by different academic institutions, universities and polling organizations in Hong Kong over the past few years. I remember that the criteria and objective yardstick of polling were discussed in the Legislative Council a couple of weeks ago, which were very clear indeed. For instance, very often, at least 1 000 respondents are required in each public opinion poll to facilitate the conduct of analysis, in order to give the public a certain degree of confidence in the poll results.

MS MARGARET NG (in Cantonese): *The Secretary has not answered my question at all. I am not asking him how the views are collected, but how he is going to deal with them. Neither did I ask how people would assess the results, but the assessment method to be adopted by the Government.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I have actually explained and clearly stated the overall principle of the assessment to be carried out by the Government, as well as the four most important aspects. According to the Basic Law, amendments to the method for selecting the Chief Executive and the Legislative Council must be made with the consensus of three parties: first, the endorsement of a two-thirds majority of all Legislative Council Members is required; second, the consent of the Chief Executive must be obtained; and third, approval by the Standing Committee of

the National People's Congress (NPCSC) must be sought. Furthermore, during his election campaign, the Chief Executive stated clearly that great importance would be attached to Hong Kong people's views. The ultimate mainstream proposal which we put forward will therefore hopefully obtain more than 60% of public support. We hope that this target can be achieved in all four aspects.

MR ALAN LEONG (in Cantonese): *President, the fourth line of part (b) of the main reply reads, "the community will be able to forge consensus and form a mainstream view". May I ask the Secretary what the Government will do to promote democratic reform when there is only a mainstream view but no consensus, given that there are cases where only a mainstream view can be formed but no consensus can be forged?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I find Mr Alan LEONG's supplementary question rather abstract. Let me try to give a concrete answer to it.

Upon reaching a certain stage, the consensus and mainstream view should merge to become one. When a proposal receives 60% of support in the community and a two-thirds support of Members from different political parties and groupings, it means that a certain degree of consensus has been forged, which can be regarded as the mainstream view. Should we fail to achieve either, it means that further consideration and discussion is required.

MR ALAN LEONG (in Cantonese): *President, the supplementary question put by me just now is actually not abstract at all because the word "and" is used in the main reply, meaning that both conditions must be satisfied. The supplementary question raised by me earlier asked what the Government would do if only either one of the conditions was satisfied, that is, only a mainstream view could be formed but no social consensus had been forged, as highlighted in the main reply. My supplementary question is as simple as this.*

PRESIDENT (in Cantonese): That means you think that the Secretary has not answered your supplementary question.

MR ALAN LEONG (in Cantonese): *I think that he has yet to answer it. If this is the case, what will the Government do?*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, if we fail to secure a certain degree of support from members of the public and the Legislative Council, it means that no consensus has been forged and those views thus do not represent the mainstream view.

MR MARTIN LEE (in Cantonese): *Madam President, the Government mentioned in part (a) of the main reply that it has maintained communication with the Central Authorities which have the ultimate power to determine the constitutional development of Hong Kong. Now, my question is: Does this apply to the content of the Green Paper? Is it necessary to consult the Central Authorities on the content of the Green Paper before it can be finalized and goes to press?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the ultimate power mentioned by me refers to the arrangements under the Constitution and the Basic Law. It is because Article 31 of the Constitution of China stipulates that the Central Authorities may decide on the establishment of special administrative regions, whereas Article 62 provides that the NPCSC may decide on the systems of special administrative regions, which includes the enactment of the Basic Law and the establishment of a political system under it, where the ultimate power still rests with the Central Authorities.

Both the discussion within the Hong Kong community and the forthcoming public consultation which will last for a few months fall in a stage of internal discussion in Hong Kong, during which a consensus on our constitutional development will hopefully be forged in the community. This stage of work will, therefore, be carried out within the HKSAR.

MR MARTIN LEE (in Cantonese): *President, the Secretary has not answered my supplementary question. I have asked very specifically about the content of the Green Paper. Insofar as my reasonable understanding is concerned, is it not necessary for us to seek the approval of the Central Government on the content of the Green Paper before it is sent for printing on our own?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, discussions of the Commission on Strategic Development (the Commission) and the Legislative Council Panel on Constitutional Affairs were conducted openly over the past 20 months, and the relevant papers have been uploaded onto the Internet. Therefore, organizations and individuals of Hong Kong or the Central Authorities can have access to all these most important discussions and papers on the Internet. I can tell Mr Martin LEE that the Green Paper will be finalized by the HKSAR Government.

MS AUDREY EU (in Cantonese): *President, I wish to follow up the supplementary question raised earlier on. Why do we still have to wait so long if approval from the Central Authorities for the Green Paper is not required before publication? This job has all along been assigned to the Commission by the Government, which stated that public consultation would begin upon completion of the Commission's discussion. However, meetings of the Commission held over the past 18 months have fully concluded, but so far, the date for releasing the Green Paper has yet to be fixed. How much longer do we still have to wait? Is it because the Government is still awaiting the Central Authorities' approval of the content of the Green Paper that we have yet to be informed of a specific date? If not, will the Secretary tell us now when we can actually see the Green Paper?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I am very grateful to Ms Audrey EU for her great concern about the progress of the Green Paper. We all look forward to proceeding to the next stage of work. Several rounds of discussions have been held by the Commission and the Legislative Council over the past 20 months, but we will strive to draw different parties closer together even at the very last moment. The Panel on Constitutional Affairs therefore held a meeting here on 21 June,

that is, Thursday morning, to discuss these issues, which was followed by a meeting of the Commission. We will make the best use of the term of office of the Commission, which is due to expire on 30 June, to listen to the views of different parties and bridge their gap. When the third term Chief Executive and principal officials assume office on 1 July, we will further negotiate and discuss the printing of the Green Paper. Once it is finalized, the next stage of work will commence in due course. Therefore, please bear with us for a short period of time before we assume office on 1 July, and I do not think this is too long.

MS AUDREY EU (in Cantonese): *I do not think the Secretary has answered the latter part of my supplementary question, that is, when the Green Paper will be released. Does the Secretary mean that I will be informed of the date when he assumes office on 1 July?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I believe no senior officials will be able to attend meetings to discuss this matter on the day of inauguration. Nonetheless, we believe it will not be a long wait because it is the aspiration of the entire community for the Government to take the matter forward by making the best use of the next few years and immediately after the third term Government has taken office. It is because during the election campaign, the Chief Executive stated clearly that the agenda of universal suffrage would be dealt with in the third term with a view to finding a set of solutions for Hong Kong.

MS EMILY LAU (in Cantonese): *President, in this pretty short main reply, the Secretary mentioned that the Central Authorities were aware of the public sentiments regarding Hong Kong's democratic development, and said that a mainstream view would hopefully be formed in future. In fact, a mainstream view has emerged long ago. For many years, all public opinion poll results showed that it has been the mainstream view to select the Chief Executive and the legislature by universal suffrage as early as possible. President, while some people said recently that there is no reunification of people's hearts due to an absence of universal suffrage even though we have been reunited for 10 years, some people said that universal suffrage was turned down by the Central Authorities because people's hearts have yet to be reunited. Are the Central Authorities aware of this situation? What should be done then?*

PRESIDENT (in Cantonese): How does the "reunification of people's hearts" relate to the main question?

MS EMILY LAU (in Cantonese): *The main reply mentioned that the Central Authorities were aware of the sentiments of people, and this is precisely the people's sentiments. So, are the Central Authorities aware of the fact that people's hearts will not be reunified without universal suffrage? However, the Central Authorities have advised that, via their spokesmen including those who are sitting in this Chamber, universal suffrage would not be allowed without the reunification of people's hearts. In that case, President, what shall we do?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, although the supplementary question raised by Ms Emily LAU is very broad, I will try to answer it.

Certainly, the Central Government and the HKSAR Government have all along kept a close watch on the sentiments and views of Hong Kong people over the past few years. And, as Members may recall, during the period between the publication of the First and Fifth Reports of the Constitutional Development, there had been repeated references to the idea that over 60% of Hong Kong citizens wished to have universal suffrage as early as possible. However, in order to implement universal suffrage, we also need to pursue a pragmatic proposal in this legislature besides public views, and secure a two-thirds majority support of Members before the relevant proposal can be endorsed and put in place according to the constitutional procedure as set out in the Basic Law. We are therefore striving to address this issue within the term of the third-term Government in the next five years on the basis of, first, Hong Kong people's expectations; second, Members' concern about constitutional development, and third, the discussions held in the past 20 months.

Insofar as the people's hearts are concerned, I did have the chance to respond to Members on this issue over the past couple of weeks. Madam President, first of all, I consider that Hong Kong people are very supportive of the reunification of Hong Kong and the implementation of the Basic Law according to the principle and policy of "one country, two systems". Second, as evident in the public opinion polls released in recent press reports, the percentage of Hong Kong people regarding themselves as Chinese or Chinese

Hongkongers has been on the increase. Third, on issues of greater concern to members of the public, for instance, when Mainland Olympian gold medalists visited Hong Kong in 2000 and 2004, there was great support from the public. Also, the visit of astronaut YANG Liwei to Hong Kong after he had returned to earth also made us elated. These occasions, no matter large or small, showed that Hong Kong people do have a sense of national belonging.

MS EMILY LAU (in Cantonese): *My supplementary question is: Do the authorities understand that there will not be reunification of people's hearts without universal suffrage? The Central Authorities, however, said that universal suffrage would not be implemented in an absence of reunification of people's hearts. President, is the Secretary aware of this situation? And, how is he going to explain this to the Central Authorities?*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I fully understand the supplementary question of Ms Emily LAU. Yet, I also hope that she will understand that both the Central Government and the HKSAR Government are fully determined to achieve the ultimate aim of universal suffrage in accordance with the Basic Law.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. We will now proceed to the second question.

PRESIDENT (in Cantonese): Second question.

Qualification for Candidacy of Chief Executive to be Selected by Universal Suffrage

2. **MR LEE CHEUK-YAN** (in Cantonese): *Regarding the qualification for candidacy of the Chief Executive to be selected by universal suffrage, will the Government inform this Council:*

- (a) *whether it knows if the Central Authorities currently agree to the following views put forward in an editorial published on 2 February 1944 in Xinhua Ribao, which was then under the charge of a late Premier, that whether the right to elect can be exercised thoroughly, fully and effectively has an inseparably close relationship with whether the right to be elected is unreasonably restricted and deprived of.....for a true system of election by universal suffrage, not only should the right to elect be "universal" and "equal", the right to be elected should also be "universal" and "equal".....if a predetermined qualification is prescribed for candidates, or certain people are even designated by the official authorities as candidates, then electors will only become tools for casting votes, even if the right to elect is not restricted;*
- (b) *given that Article 45 of the Basic Law provides that candidates for the selection of the Chief Executive by universal suffrage should be nominated in accordance with "democratic procedures", whether the Government has examined if the qualification for nomination as a candidate should be determined in accordance with the principles of "universal" and "equal", and no person should be given differential treatment or subject to unreasonable restriction in respect of his qualification for nomination as a candidate on grounds of his background, his being poor or rich, and his political or other convictions; and*
- (c) *as some members of the Commission on Strategic Development (the Commission) have proposed that candidates for the selection of the Chief Executive by universal suffrage should be screened by the Nominating Committee according to the preference of the Central Authorities, whether the Government has assessed if this is consistent with the provision of Article 45 of the Basic Law that candidates should be nominated in accordance with democratic procedures?*

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

- (a) In respect of part (a) of the question, the constitutional basis of the political structure of the SAR is based on the Constitution of the

People's Republic of China and the Basic Law. The Central Authorities will certainly deal with Hong Kong's constitutional development in accordance with the relevant principles of the Basic Law.

(b) and (c)

Regarding parts (b) and (c) of the question, the model for electing the Chief Executive by universal suffrage must comply with the principles of the SAR's political structure in the Basic Law, and the relevant provisions. Aside from provisions in the Basic Law, additional conditions will not be prescribed.

As to how the nomination method can comply with the requirement of "nomination in accordance with democratic procedures" as stipulated in Article 45 of the Basic Law (including the level of nomination threshold and the operation of the nominating committee), the issue has to be discussed actively within the community, with a view to reaching consensus after the SAR Government have published the Green Paper on Constitutional Development by the middle of this year.

MR LEE CHEUK-YAN (in Cantonese): *President, the crux of this question is whether the qualification for candidacy should be consistent with the principles of "universal" and "equal". However, the Secretary replied to the question without giving any answer, his usual style in answering questions. Concerning the current discussion on universal suffrage, some members of the Commission propose that candidates should first be screened by the Central Authorities before the public can vote on the candidates, but this is in a way restricting the right to be elected. President, may I ask the Secretary whether he knows that this is actually contradictory to the remarks made by ZHOU Enlai, the late Premier, in the editorial in 1944? At that time, he already predicted that there would be a discussion of this kind and thus stated unequivocally that the right to be elected should be universal and equal. He used the terms "general" (普通) and "equal" at that time. I think, according to the new terms nowadays in use, we should use "universal" (普及) and "equal". I believe the Secretary also knows that the Central People's Government is under the leadership of the Communist Party of China, and that was the position of the Communist Party of China in 1944. Will*

he admit now that the position held by the Communist Party of China in 1944 should be adopted in considering the right to universal suffrage and the right to be elected?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, if my guess is right, in the year 1944, neither Mr LEE Cheuk-yan nor I was born. Certainly, incidents happened in the country over the several decades before 1949 still have a bearing on the situation today. For the revolution in 1949 brought about the establishment of the People's Republic of China. According to the Constitution, the Basic Law of the SAR has been formulated. Therefore, the ultimate aim of universal suffrage is stated unequivocally in the Basic Law of the SAR.

Moreover, Mr LEE Cheuk-yan and Mr LEE Wing-tat have both participated in the discussions held by the Commission in the past 20 months. We all know that since last year, it has been established at the Commission that in the implementation of universal suffrage for the selection of the Chief Executive and the forming of the Legislative Council, the principles of universal and equal should be met. We all know these two points full well. Regarding the selection of the Chief Executive by universal suffrage, according to the Basic Law, a candidate shall be not less than 40 years of age and has resided in Hong Kong for not less than 20 years. Besides, all candidates must satisfy three requirements. First, a candidate must secure nomination from members representing different sectors and strata in the nominating committee. Second, upon nomination, the candidate should secure the support of the public, registered voters by "one person, one vote". Third, the candidate must have the appointment of the Central Government. Therefore, candidates who are not less not than 40 years of age and have resided in Hong Kong for not less than 20 years, a requirement stipulated in the Basic Law, should canvass support of the nominating committee, which is a constitutional arrangement fully consistent with the Basic Law.

MR LEE CHEUK-YAN (in Cantonese): *In fact, I have all along been asking the Secretary..... Though we were not yet born at that time, he admitted that incidents happened in the '40s would have a bearing on the history of China and the situation today. My question is whether the position held at that time, that the right to be elected should not be deprived of and restricted is applicable to the current discussion on universal suffrage. The Secretary has not answered this.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I have already answered Mr LEE Cheuk-yan's question. Definitely, a candidate has to satisfy the requirements stipulated in the Basic Law. On the one hand, a candidate shall not be less than 40 years of age and has resided in Hong Kong for not less than 20 years. On the other hand, he or she must first canvass support of the nominating committee to become a legitimate candidate before proceeding to the next stage to participate in universal suffrage. This arrangement is fully consistent with the law and the Constitution.

MR LEE WING-TAT (in Cantonese): *President, in part (b) of the question where reference to candidates is made, the term "democratic procedures" is mentioned. I believe the Secretary also knows about the proposal put forth by Mr Alan HOO, a member of the Commission. According to his proposal, the Election Committee will conduct consultation and select two candidates by voting. He has once written an article stating that apart from this approach, other approaches which allow the candidates be selected by individual members, irrespective of the number of members involved, be it 50, 100 or 200, are not in compliance with the democratic procedures. May I ask the Secretary whether the approach proposed by Mr Alan HOO is the only conclusion on the interpretation of democratic procedures?*

PRESIDENT (in Cantonese): Secretary, it is about democratic procedures.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I believe Mr LEE Wing-tat and other Members will agree that if we have to implement universal suffrage in selecting the Chief Executive, we have to act in accordance with the provisions in the Basic Law. Therefore, the establishment of a broadly representative nominating committee and the nomination of candidates in accordance with democratic procedures are things we should do according to the Basic Law. At this stage when public consultation and discussions are in process, it is most important that we focus on the following aspects. First, how can we set up a nominating committee with broad representativeness? How many members should the committee include? How should the members be selected and which sectors and strata should they represent? Second, what kind of democratic procedures should be used in the nomination of candidates?

Mr LEE Wing-tat has also taken part in the discussions held in the past 20 months. He knows that various approaches for nomination have been put forth at the Commission and in this Chamber. With regard to the nomination threshold, some people have suggested to maintain the existing nomination threshold of 1% of the size of the Election Committee. Some people have proposed a lower threshold. For instance, in a proposal put forth by 22 Members of the Legislative Council, it is considered that securing nominations from 50 members will be adequate for a nominating committee composed of 1 200 members. On the other hand, some people consider that since this is the first time the Chief Executive is elected by universal suffrage, the nomination threshold can be slightly raised as a start, say to one fourth of members. Concerning the nomination threshold, these proposals and approaches belong to one type. Regarding the proposal of Mr Alan HOO, SC, mentioned particularly by Mr LEE Wing-tat, which proposes the nominating committee to run on its own and nominate candidates, it is another type of proposal.

However, during the discussion at the Commission last Thursday, Prof CHEN Hung-ye expressed his opinion. He considered that the arrangement of setting a nomination threshold and the nomination of candidates by the nominating committee as a whole were both in compliance with the requirement on democratic procedures. Therefore, at this stage, we have to engage in practical discussion to strive for a consensus on the democratic procedures to be laid down.

MR LEE WING-TAT (in Cantonese): *Despite his lengthy reply, he failed to answer my supplementary question, which is indeed straightforward. Mr Alan HOO once proposed the nomination of candidates by the committee. At the Commission and in an article written by him, he said that this was the only approach in compliance with democratic procedures. I meant to ask the Secretary — not quoting the remarks of Prof CHEN Hung-ye — that as a representative of the Government, does he agree with Mr Alan HOO's remark that this is the only approach compliant with democratic procedures?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, in fact, it is out of respect that I gave a relatively detailed and systematic reply to Mr LEE Wing-tat's question. He should know clearly that

the views expressed by either Mr Alan HOO, SC, or other Honourable Members, and other academics or the meeting participants are their personal views, which do not represent the views of the Government. At this stage, we have to gather different views extensively and conduct serious discussions, analyses and studies. When will the issue be finalized eventually? It is when the proposal is submitted to the legislature and put to vote. If a certain proposal is supported by two thirds of Members, Members will have the opportunity to make the decision. Today, we are at the discussion stage. Why did I mention the views of Prof CHEN Hung-ye? For he is a legal expert, and I think it is worthy for us to draw reference from his analysis in some measure.

DR FERNANDO CHEUNG (in Cantonese): *Mr LEE Cheuk-yan's question states clearly the remarks made by the late Premier ZHOU Enlai on that day, that not only should the right to elect be universal and equal, the right to be elected should also be universal and equal. May I just ask whether the Secretary agrees with these remarks by the late Premier ZHOU Enlai?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I agree that when the selection of the Chief Executive and the forming of the Legislative Council by universal suffrage is implemented in Hong Kong, the principles of universal and equal must be complied with. However, in Hong Kong, a special administrative region, the implementation of these two sets of electoral systems must be compatible with the local situation.

DR FERNANDO CHEUNG (in Cantonese): *May I ask him to clarify whether being compatible with the local situation means compromising the principles of universal and equal?*

PRESIDENT (in Cantonese): According to the Rules of Procedure, when a Member asks a follow-up question, it must be part of the supplementary question asked by the Member earlier.

DR FERNANDO CHEUNG (in Cantonese): *I understand it.*

PRESIDENT (in Cantonese): However, you are now asking a government official to make a clarification. According to the Rules of Procedure, your request is not allowed. You may press the button to wait for another turn, and I hope you will have the opportunity to ask another question.

DR FERNANDO CHEUNG (in Cantonese): *President, perhaps I can put my question in another way.*

PRESIDENT (in Cantonese): Fine.

DR FERNANDO CHEUNG (in Cantonese): *The supplementary question I put forth earlier is: Though the Secretary mentioned the local situation in his reply, he failed to answer clearly whether or not he, subject to such restriction, agreed that the right to elect and the right to be elected should be consistent with the principles of universal and equal?*

PRESIDENT (in Cantonese): The Secretary has already answered your question. In the supplementary question you asked earlier, the latter part is not included. You just wish the Secretary to provide supplementary information after hearing his reply, am I right?

DR FERNANDO CHEUNG (in Cantonese): *President, his reply gave no direct answer to whether or not he agreed fully with the remarks of the late Premier ZHOU Enlai.*

PRESIDENT (in Cantonese): Do you mean to know whether he agrees fully with the remarks, with no additional condition?

DR FERNANDO CHEUNG (in Cantonese): *Yes.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, from my point of view, this article by the late Premier ZHOU Enlai was published in the '40s, prior to the founding of the country. The article certainly has its important value in history and affects the development of the country even now. However, the implementation of universal suffrage in Hong Kong must be consistent with the provisions of the Basic Law. That is why I mentioned particularly the implementation of a universal suffrage system must be compatible with the situation and condition of the territory. Why do I say so? For we cannot put discussions on these principles out of context, and if we have to attain the ultimate aim of universal suffrage as stipulated in the Basic Law, the issue will be put to final vote in the light of the actual situation in the legislature. We have to strive for the support of two thirds of Members, but it depends on what proposal we put forth and whether Members are willing to seek common grounds to forge a consensus. If I omit this final point, my reply will be less than complete.

PRESIDENT (in Cantonese): Last supplementary question.

MR ALBERT HO (in Cantonese): *Earlier on, the Secretary emphasized that democratic procedures were mentioned in the Basic Law. On the surface, he seemed to support compliance with the principles of equal and universal. However, when it came to the specifics, he said that it should be consistent with the situation in Hong Kong, and the final proposal formulated should be based on the consensus of society. May I ask the Secretary whether he is suggesting that a proposal, which is consistent with the local situation and a final consensus in society, may not necessarily be in compliance with the principles of equal and universal? In other words, will consideration of local situation override the principles of universal and equal?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, Mr Albert HO is a lawyer, and a number of Members in this legislature are lawyers, too. One has to be particularly cautious in answering supplementary questions posed by lawyers, for a Member once posed a question on an isolated situation instead of referring to the reality, there is some risk.

In respect of the local situation, it is indeed a requirement stipulated in the Basic Law. Under Articles 45 and 68 of the Basic Law, it is defined

categorically that the ultimate aim of selecting the Chief Executive and electing the Legislative Council by universal suffrage must be attained with gradual and orderly progress and in the light of the actual situation. Therefore, compliance with the actual situation in Hong Kong is a constitutional basis and a requirement of the Basic Law. I believe, in the near future, we will discuss different proposals and discussions will be conducted in the context of the requirements stipulated in the Basic Law. It is hoped that a consensus can be eventually forged on various proposals. By then, if we act in accordance with the Basic Law, we can surely comply with the principles of universal and equal.

MR ALBERT HO (in Cantonese): *The Secretary has not answered whether, under the condition of being consistent with the local situation, it is possible that proposals not in compliance with the principles of equal and universal will be accepted in the outcome of the Green Paper consultation, for at least this is the case for the time being? I just want to have a specific answer to this. Will non-compliance with the principles of equal and universal be allowed?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I believe we all respect the direction of attaining the ultimate aim of universal suffrage. As to how we can come up with a proposal accepted by all, a proposal supported by 60% of the public and endorsed by two thirds of the Members as I said at the beginning, we have to act in accordance with the Basic Law and work for the passage of such a proposal.

MR ALBERT HO (in Cantonese): *President, I am asking this simple question for the last time. If a proposal is supported by two thirds of Members and the so-called mainstream view of Hong Kong, does it mean that the proposal can be contradictory to the principles of universal and equal? I just ask him if it is a "yes" or a "no". Will he give me a direct answer?*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I believe members of the public, organizations, political parties and

groupings and Members concerned about universal suffrage will wish to see the actual implementation of universal suffrage and that when universal suffrage is implemented in Hong Kong, it will be consistent with the principles of universal and equal.

PRESIDENT (in Cantonese): Third question.

Options for Universal Suffrage

3. **MR ALAN LEONG** (in Cantonese): *President, regarding the remarks made by the Secretary for Constitutional Affairs on 12 April this year after attending the ninth meeting of the Committee on Governance and Political Development of the Commission on Strategic Development (the Commission), will the Government inform this Council:*

- (a) *as the Secretary mentioned on that day that quite a number of members of the Commission agreed that the selection of the Chief Executive by universal suffrage should be implemented first, before dealing with the election of all Members of the Legislative Council by universal suffrage, whether the Green Paper on Constitutional Development to be published in the near future will include the option of concurrently implementing election by universal suffrage of both the Chief Executive and all Members of the Legislative Council;*
- (b) *given the Secretary's remark on that day that the difference among members of the Commission was whether the functional constituency seats of the Legislative Council should be abolished immediately in one go or progressively, whether this implies that the Green Paper will not include any options which seek to retain a certain number of functional constituency seats in the end; and*
- (c) *since the Secretary said on that day that he hoped that the options put forth would have wide support among the public, how, in deciding whether individual options should be included in the Green Paper, it will assess if these options will be widely supported by the public, when members of the public do not know and have not yet*

discussed those options; and of the method to be used for assessing the level of public support for the various options in the Green paper and details of such an assessment method?

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

- (a) We will publish a Green Paper on Constitutional Development on the basis of the discussions of the Commission and the community in the past 20 months. The Green Paper will present three types of options for implementing universal suffrage for electing the Chief Executive and for forming the Legislative Council respectively to facilitate public understanding and discussion. Aside from those which are inconsistent with the Basic Law, we have not ruled out any options at this stage. The proposal put forth by the 22 Members of the Legislative Council, together with other proposals, will all be covered by the Green Paper.
- (b) Currently, as a matter of fact, members of the Commission still have significant differences on the model for forming the Legislative Council by universal suffrage, particularly on how to deal with the functional constituencies. Nonetheless, when we publish the Green Paper, except those which are inconsistent with the Basic Law, all proposals on the models for forming the Legislative Council by universal suffrage which we have received will be covered by the Green Paper.
- (c) To attain universal suffrage, any options for implementing universal suffrage should be consistent with the Basic Law, and should not require any amendments to the main provisions of the Basic Law. Also, we hope that the relevant options are likely to:
 - (1) attract majority support among Hong Kong people;
 - (2) stand a reasonable chance of securing two-thirds majority in the Legislative Council; and
 - (3) stand a reasonable chance of being considered seriously by the Central Authorities.

Until now, we have not taken a view on which three types of options to be presented in the Green Paper. Nonetheless, all proposals put forth by different political parties, organizations and individuals to the Commission will be covered by the Green Paper.

Regarding how we can assess the level of public support for different options after the Green Paper has been published, the objective criteria that can be considered include:

- (i) whether an option can obtain support from over 60% of the public by making reference to the opinion polls conducted by different academic institutions and local organizations; and
- (ii) whether an option can secure support from two thirds of the Members of the Legislative Council.

MR ALAN LEONG (in Cantonese): *President, parts (a) and (b) of the main question are very straightforward, both being "whether or not" questions. But neither one has been answered. I think I can only follow up one of the two parts, I thus choose part (b). In part (b) of the main question, I mentioned "options which seek to retain a certain number of functional constituency seats in the end". May I ask the Secretary whether this type of options is consistent with the Basic Law according to part (b) of the Secretary's main reply?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, though Mr Alan LEONG only followed up part (b) of the main question, I would like to make a clarification on part (a) with your permission. In respect of part (a), as I have already said, the proposal put forth by the 22 Members of the Legislative Council, together with other proposals, will all be covered by the Green Paper. This means that the proposal for the implementation of dual elections by universal suffrage in 2012 put forth by Members will also be open to discussion. And we will give a faithful account of proposals put forth by all parties.

Regarding this approach, Madam President, as significant differences on the model for attaining universal suffrage ultimately still exist in discussions held at the Commission and other forums, we will, at the present stage, set out various options for discussions. Some people are of the view that the 30 seats

returned by functional constituencies should be abolished as soon as possible and be replaced by seats returned by geographical constituencies. Concerning this type of proposals, there can be discussions. Some people consider that functional organizations may nominate candidates to be elected by registered voters as representatives of different sectors. This type of proposals can also be discussed. However, at this stage, there is really no finalized option. We may discuss and examine the issue seriously.

PRESIDENT (in Cantonese): There are altogether 12 Members waiting for their turns to ask supplementary questions, so will Members who have the opportunity to ask questions please be concise.

MR LEUNG YIU-CHUNG (in Cantonese): *President, in part (c) of the main reply, the Secretary pointed out that in assessing the level of public support for different options, certain objective criteria would be considered, including these two points: (i) "making reference to the opinion polls conducted by different academic institutions and local organizations" to assess whether an option can obtain the support from over 60% of the public; (ii) "whether an option can secure support from two thirds of the Members of the Legislative Council". May I ask the Secretary, if none of the options can secure the support of over 60% of the public according to the surveys, what he will do? How can he be sure that the support of two thirds of Members can be successfully secured? What objective criteria will be used to confirm that support from two thirds of the Members can be secured?*

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, you have asked two supplementary questions, which one do you wish the Secretary to answer?

MR LEUNG YIU-CHUNG (in Cantonese): *President, I am following up the point on objective criteria. I just asked him to explain those two points.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, we believe that for some time in the future, various universities, think-tanks and research institutions will continue to conduct these types of opinion polls. At present, opinion polls conducted by academic institutions in

Hong Kong are indeed well-established and very professional. We are able to grasp the opinion of the public in some measure by referring to these opinion polls.

On the other hand, regarding the opinions of the Legislative Council, different political parties and groupings and Members will continue to give their views on this issue at meetings of the Legislative Council and committees, therefore I believe there will be no difficulty to grasp the position of Members. Besides, I believe this is an interactive process. We will issue the Green Paper. In the next few months, I believe different political parties and groupings will put forth more opinions in addition to their own proposals. In this interactive process and the course of discussions, we should be able to know whether certain option stands a chance of securing the support of two thirds of Members. However, since this is an interactive process, we cannot tell the result until the very moment Members vote on the option.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, has your supplementary question not been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *The Secretary has not answered what he would do if opinion polls conducted by academic institutions indicated that none of the options could obtain support from over 60% of the public. He has not responded to this supplementary question.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, we will have to keep working hard in that case. Different political parties and groupings of the Legislative Council and the Government should all do their level best to work out an option that can really secure support from the people of Hong Kong.

MR JAMES TO (in Cantonese): *President, actually, I only wish to follow up a part of the question that has not been answered. The Government often fails to answer questions. In part (c) of the question, Mr Alan LEONG asked: "how, in deciding whether individual options should be included in the Green Paper, it will assess if these options will be widely supported by the public?" But the*

reply of the Government only said that different proposals put forth by different political parties and groupings would be covered. Now, the problem lies in how the three options, which the Government said would be presented and widely supported by the public, will be selected from the various proposals put forth by different political parties and groupings? What objective foundation and reference will be adopted?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, Mr James TO's supplementary question has in fact confused the arrangements at two different levels and stages. At this stage, we are preparing the Green Paper and its coverage should be as wide as possible. During the past 20 months, different political parties and groupings, organizations, Members and other individuals have put forth different types of proposals on attaining the ultimate goal of universal suffrage. Therefore, we must adopt an extensive coverage approach. The options are divided into three types to facilitate the public in understanding and discussing the models, roadmap and timetable for implementing universal suffrage. We will by all means keep discussions to be held in the next few months systematic and logical.

However, concerning the assessment of the level of support of the public and the legislature, continuous efforts will be made to follow up the matter after the Green Paper is issued, where the objective reality allows us to follow up the issue. These are the two levels of work and stages involved, so Members should not confuse them.

MR JAMES TO (in Cantonese): *President, the Secretary has not answered my supplementary question. I have not mixed them up, for assessment of the level of public support is carried out after the release of the Green Paper. The part of my supplementary question that the Secretary has not answered is about the three options to be included in the Green Paper. Does it mean that even if the three options cannot obtain public support, they can still be included in the Green Paper? How does the Secretary decide which options should be included in the Green Paper?*

PRESIDENT (in Cantonese): Mr James TO, the Secretary said three types of options.

MR JAMES TO (in Cantonese): *Yes, three types of options. How do the authorities decide the inclusion of these three types of options? I have not mixed them up, for I am referring to the inclusion of the three types of options in the Green Paper. My supplementary question is: How will the Secretary classify various proposals into these three types of options? Will proposals with public support and those without public support both be included under the three types of options?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the confusion does not arise from Mr James TO, for the main question has somehow mixed up the two stages. But, never mind, the issue is indeed complicated and quite difficult to understand. At this stage, we will classify all the opinions collected into three types of options, for, firstly, the coverage has to be extensive by all means, and secondly, this will facilitate the understanding and discussion of the public.....

(Ms Margaret NG raised her hand to indicate an intention to speak)

PRESIDENT (in Cantonese): Is it a point of order?

MS MARGARET NG (in Cantonese): *Madam President, we may request the speaker to make clarification during a debate. May I ask whether we can do so during Question Time?*

PRESIDENT (in Cantonese): According to the Rules of Procedure, there is no similar arrangement during Question Time. Will the Secretary for Constitutional Affairs please continue with your reply.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I will go on. In deciding these three types of options, consideration in various aspects has been made. First, the coverage has to be extensive. Second, proposals are classified into three types of options to facilitate the public in gaining knowledge of, discussing and understanding the issues. Third, it is

hoped that the presentation of these three types of options will be conducive to the understanding and discussion of the public, thereby facilitating the forging of a consensus eventually.

In dealing with this issue, at the current stage, since we are preparing to issue the Green Paper, the Government does not have a predetermined stance, for we wish to listen to different opinions as far as possible. At this stage, we will by all means set out all the proposals, except those inconsistent with the Basic Law.

MR CHEUNG MAN-KWONG (in Cantonese): *President, the three types of options covered in the Green Paper are related to the ultimate option to be submitted to the Legislative Council by the Government. According to past experience, prior to the submission of the ultimate option to the Legislative Council by the Government, Members of the Legislative Council are not allowed to propose any amendment. After issuing the Green Paper and before synthesizing an ultimate option, will the Government strive for a consensus in the greatest measure through interaction and consultation with political parties and groupings to prevent the option submitted to the Legislative Council from coming to a lose-lose outcome at voting, so as to ensure that it stands a chance of getting support from a two-thirds majority in the Legislative Council in achieving the goal?*

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, if you do not mind, I suggest that your supplementary question be put in the following way: As the Secretary said in the main reply that assessment of whether the option could obtain the support of a two-thirds majority in the Legislative Council, will the assessment include consultations with different political parties and groupings?

MR CHEUNG MAN-KWONG (in Cantonese): *Thank you, President. I wish to do so, but I am afraid I will take up too much time. Thank you.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I too think time is precious, but since there will be the fourth question, I am sure Members will have the chance to ask questions.

We attach great importance to the views of different political parties and groupings and all Members. And naturally, all along, we have paid attention to the proposals put forth by Members and the approaches supported by Members of dealing with and implementing the ultimate aim of universal suffrage. I believe after the issue of the Green Paper, we will continue to promote discussions and mutual understanding with Members. Upon the completion of the three-month consultation of the Green Paper, I believe Members will not take a recess so soon and will surely continue discussing the issue with us in autumn, perhaps till the end of the year. Therefore, I believe we will have the opportunity to grasp the position of all parties, both inside and outside the legislature.

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question. Last supplementary question now.

MISS CHOY SO-YUK (in Cantonese): *President, in part (c) of the main reply, in which the Secretary listed the two objective criteria, the word "and" is used to link up the two criteria: "(i) can obtain support from over 60% of the public by making reference to the opinion polls conducted by different academic institutions and local organizations; and (ii) whether an option can secure support from two thirds of the Members of the Legislative Council." May I ask the Secretary, if certain options can only secure the support of a two-thirds majority of the Legislative Council but fail to obtain support from over 60% of the public, what the Government will do?*

PRESIDENT (in Cantonese): Miss CHOY So-yuk, your supplementary question for the Government is premised on an assumption of the occurrence of a certain situation. However, according to the Rules of Procedure, Members are not allowed to raise hypothetical questions. Perhaps you can put your question this way: Of the two objective criteria, which one is more important? Is this what you meant to ask?

MISS CHOY SO-YUK (in Cantonese): *Yes, or must both criteria be met?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, thank you for your guidance. *(Laughter)* The criteria for these two aspects are both important. Actually, in addition to satisfying the criteria in these two aspects, an option, according to the Basic Law, certainly has to obtain the consent of the Chief Executive and the approval of the Central Authorities.

PRESIDENT (in Cantonese): Fourth question.

Pay Adjustments for Staff of Subvented Institutions

4. **MR CHEUNG MAN-KWONG** (in Cantonese): *The Government has decided to adjust the starting salaries of most grades in the Civil Service upwards by one to five pay points and increase the salary of civil servants by about 5% this year. Regarding the pay adjustments for staff in the institutions funded by the University Grants Committee (UGC) and those under the Vocational Training Council (VTC) (subvented institutions), will the Government inform this Council:*

- (a) whether additional funding will be provided to the subvented institutions for them to increase the salary of their staff; if so, of the respective amounts of additional funding to be provided to each subvented institution in respect of the above two adjustments;*
- (b) whether it knows if the pay adjustments for staff in subvented institutions will be the same as those for the Civil Service; if they are not the same, of the reasons for that; and*
- (c) how it ensures that subvented institutions will use the additional funding entirely for pay adjustments of their staff?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President,

- (a) It has been the Government's established practice that following a civil service pay adjustment, the Government would adjust the amount of subventions provided to organizations whose subventions are subject to price-adjustment based on established formulae.

Subject to the approval of the Legislative Council's Finance Committee of the 2007-2008 Civil Service Pay Increase proposed by the Administration, the Government will increase the personal emolument portion of the recurrent subventions provided to the UGC-funded institutions and the VTC, based on the formulae adopted in past pay adjustment exercises. We estimate that annual additional recurrent grants of about \$423 million and \$74 million will be provided to the UGC-funded institutions and the VTC (including its skills centres) respectively in 2007-2008 and beyond.

The staff salary structures of UGC-funded institutions and the VTC have been delinked from the civil service pay scales since 2003 and 2004 respectively. For this reason, the starting salaries adjustments recommended in the 2006 Civil Service Starting Salaries Survey (SSS), as well as the normal conversion arrangement for affected civil servants, would not apply to these institutions automatically. That said, for institutions whose government subventions had been reduced as a result of the downward adjustment of the civil servants' starting salaries in April 2000 (the 2000 exercise), the Government will adjust the subventions provided to these institutions as appropriate from 2007-2008 onwards. In doing so, the Government will take into account, among other things, the terms of the subvention agreements signed between the Government and the individual institutions and the amount of subventions that have been reduced since the 2000 exercise. As the Government had not clawed back any savings from the UGC sector during the 2000 exercise, there is no need to adjust the amount of subventions to the UGC sector in the current exercise. Meanwhile, we are discussing with the VTC the need to provide additional subventions to the Council, having regard to the amount of savings that have been returned to the Government in the past years in connection with the 2000 exercise.

(b) and (c)

Staff recruitment and remuneration are matters within the autonomy of the UGC-funded institutions and the VTC. The salaries structures of these organizations have also been delinked from the civil service pay scales. While the Government will provide

additional subventions to the UGC-funded institutions and the VTC for pay adjustment purpose based on the established formulae, the extent of pay adjustment to be implemented in these institutions will be decided by the institutions themselves in accordance with their established procedures. It would not be appropriate for the Government to get involved in the pay adjustment exercises of the individual institutions, or to give directions to them as to how the additional subventions should be used.

MR CHEUNG MAN-KWONG (in Cantonese): *Dr York CHOW, the Secretary for Health, Welfare and Food, openly assured the medical and nursing sectors in the Legislative Council the other day that all additional subventions for remuneration will definitely be used for staff emolument.*

Will the Secretary for Education and Manpower give the same assurance that the additional subventions of \$423 million and \$74 million for the UGC-funded institutions and the VTC respectively — for pay increase purpose — will also be definitely used for staff emolument rather than being exploited by the institutions or used for other non-remuneration purposes?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, we can ensure that the amounts mentioned, that is, the \$420-odd million and the \$74-odd million mentioned by Mr CHEUNG Man-kwong just now, will definitely be granted to the UGC and VTC. However, after the subventions are given to them, it should be their own decision as to how to use them as they enjoy autonomy. Hence, it is up to their own decision as to how to allocate the money.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, has your supplementary question not been answered?

MR CHEUNG MAN-KWONG (in Cantonese): *Does it imply that the Government cannot ensure that such subventions for pay increase will be entirely used by tertiary institutions for pay increase of their teaching staff and may ultimately be redeployed by such institutions for other purposes?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): We will ensure that these subventions will definitely be granted to the institutions, we will definitely do so. However, the institutions enjoy autonomy, not to mention that Members are very sensitive about the autonomy of these institutions. Thus, the Government will not interfere.

MR ANDREW LEUNG (in Cantonese): *I declare that I am the Chairman of the VTC.*

The Secretary stated in the main reply that this pay adjustment involves two aspects: firstly, it is carried out on the basis of the pay trend survey, and secondly, according to the result of the SSS. The Secretary stated in part (a) of the main reply that \$74 million will be provided to the VTC as additional funding. This, in fact, can only reflect the upward salary adjustment as indicated by the pay trend survey. For staff already delinked from the civil service pay scales, it remains uncertain, for the time being, as to how their starting salaries will be adjusted.

In fact, most institutions were delinked from the civil service pay scales as a result of public resources being cut by the Government a few years ago, and were thus forced to employ staff with lower starting salaries and emolument. In the VTC, there are 1 800 such employees. If they are not covered in this pay adjustment exercise, there will be large staff wastage, rendering the institution unable to operate and in turn rendering it impossible to make money to pay staff salaries. In this regard, for the VTC alone, it involves \$65 million. The Secretary, however, did not mention this \$65 million in his reply. As the Secretary indicated in part (b) of the main reply that he would hold discussions with us and given that the Government is now actively advocating social justice and harmony, may I ask the Secretary, in a bid to address this problem, whether he will promptly react to public sentiments by providing additional funding for subvented public institutions according to the SSS, so that they can make corresponding pay adjustments?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, in fact, the VTC is in a situation different from that of the UGC because we did claw back savings from the VTC in the 2000 exercise, and it is thus necessary for us to make corresponding adjustments. We are now discussing with the VTC on how we should address this problem.

DR YEUNG SUM (in Cantonese): *I myself am very concerned about the autonomy of these institutions. That said, I wish to ask the Secretary: If the Finance Committee of the Legislative Council approves in July the Civil Service Pay Increase tabled by the Government, additional funding — that is, the sums of \$423 million and \$74 million, both of which are public money — will be provided to the institutions. When we examine the allocation of these public funds, is the Secretary not duty-bound to ensure that they are truly spent on the emolument of the teaching staff?*

PRESIDENT (in Cantonese): Dr YEUNG Sum, is there something you need to declare?

DR YEUNG SUM (in Cantonese): *Yes, I am a member of the university teaching staff. Thank you, President, for the reminder.*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, the civil service pay scales were delinked from the pay scales of the university teaching staff in 2003. Although they were delinked, the Government has still earmarked funding for these institutions in accordance with the increment points before they were delinked and thus there is a \$400-odd million subvention for them.

However, after the funding is given to the institutions, since they have been delinked, it will be inappropriate for us to interfere with their operation by requiring them how to increase their staff salaries. In this regard, the universities themselves have to follow certain procedures on the increase of staff salaries and other aspects. We will respect the autonomy of the universities.

DR YEUNG SUM (in Cantonese): *My supplementary question just now mainly focuses on the fact that these are public funds granted with the approval of the Finance Committee. In this context, should the Secretary not ensure that the money will be properly used and serves its purpose, that is, to be spent on the teaching staff?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): All money allocated to the universities is public money. We require at all times the institutions to properly use the public money.

MISS CHAN YUEN-HAN (in Cantonese): *We all welcome the civil service pay increase, but this has led to universities and the VTC..... President, I also need to declare that I am a Board member of the VTC. In the meeting yesterday, we also discussed the issue of funding, and the issue of how to deal with the starting salaries of the staff was also raised in the meeting. If the authorities do not give us the funding, the state of the staff will be pathetic. This is a matter of staff morale.*

As Mr CHEUNG Man-kwong has said just now, this problem also exists in the welfare sector and medical sector. Certainly though, these are not under the ambit of the Secretary, we, nonetheless, worry that, just like VTC now, additional funding is granted to them only according to the pay trend survey. In the Board meeting yesterday, we held that the funding should be used entirely for pay increase, but what can be done if some institutions do not do so? We do have such a worry at present. I fully understand the importance of autonomy of the universities especially as it has been discussed recently, but I hold that this, after all, is public money contributed by members of the public and to be used specifically for remuneration. May I ask the Secretary, under the present system, whether there is any method to address this problem in terms of administration?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I believe the UGC, of which Miss CHAN Yuen-han is also a member, is duty-bound to do this. I believe the boards of such institutions and others are made up of a group of enthusiastic and responsible people, and they will handle the matter properly. In this regard, I hold that the Government does not need to interfere with or give directions to these institutions as to how to handle the matter.

MR LAU KONG-WAH (in Cantonese): *President, the Secretary has explicitly stated that these two sums of money are to be used for making up for the shortfalls, but the authorities cannot direct institutions how to use them. May I*

ask the Secretary the following: In granting a sum of money to an institution you should not just allocate the money, you must also have some sorts of a written record or even some documentation on it. May I ask the Secretary whether there are written records specifying that this amount of funding is to be used for making up for the shortfall in remuneration? If not, what is the purpose of the funding?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, we will certainly explain why all of a sudden we will provide funding for the institutions and the VTC, and specify that this is for remuneration. We will not, however, force upon the institutions what to do after the funding is given to them.

MR LAU KONG-WAH (in Cantonese): *The Secretary has not answered my supplementary question. Certainly though, the Secretary can name the reasons, has he specified that it is for the shortfall?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): We will not specify that the institutions have to use the funding entirely for staff emolument because they have been delinked from the civil service pay scales. The pay increase for some staff may be more than the four-odd percent while some may be less. This should be decided by the institutions themselves.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, do you have a point of order?

MR CHEUNG MAN-KWONG (in Cantonese): *No, I wish to ask a question.*

PRESIDENT (in Cantonese): Then, you have to wait for another turn.

MISS TAM HEUNG-MAN (in Cantonese): *As far as subvented institutions are concerned, many of them employ staff on contract terms. I wish to put a question in relation to contract teachers.*

When the Government provides additional funding for pay adjustment of the teaching staff of these institutions, does the funding cover pay adjustment of their contract teaching staff? If the contract staff can have a pay increase, do their contracts need to be revised? If they cannot have a pay increase, will the staff be divided?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I have made it clear that we have not interfered with how these institutions employ their staff, whether they have employed them on contract or non-contract basis, and so on. Such details should be decided by the institutions themselves.

PRESIDENT (in Cantonese): Mr James TO.

(Miss TAM Heung-man raised her hand)

PRESIDENT (in Cantonese): Mr TO, wait a moment. Miss TAM, has your supplementary question not been answered?

MISS TAM HEUNG-MAN (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): Please stand up first.

MISS TAM HEUNG-MAN (in Cantonese): *Yes, that is why I raised my hand to ask you first before putting my question.*

My supplementary question just now asked the Secretary, as far as pay adjustment is concerned, whether it covers contract teachers. The Secretary did not specify clearly just now whether they are covered.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): We include the entire teaching staff.

MR JAMES TO (in Cantonese): *The Secretary's main reply is very clear and I thus wish to ask a question at greater depth.*

The Secretary stated in part (b) and (c) of the main reply that because some institutions have already been delinked from the civil service pay scales, the extent of pay increase may differ among individual staff as the institutions have autonomy in this respect. However, the present problem is likely to be that, in view of the funding is allocated for pay adjustment, as stated by the Secretary in the main reply, this is thus a specific provision which is subject to the agreements signed between the Government and individual institutions. However, why does the Government not specify to the institutions that this is a specific provision for pay adjustment? Certainly though the extent of pay increase of individual staff is subject to his or her performance or other criteria such as whether he or she is contract staff or non-contract staff, these are determined by the institutions. However, as this is a specific provision, why does the Government not seek to ensure that they will not use the funding for purposes other than pay adjustment?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I believe the institutions will use the funding on remuneration, but flexibility is very important. We thus have given such flexibility back to the institutions.

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question. Last supplementary question now.

MR CHEUNG MAN-KWONG (in Cantonese): *President, it has been specified that this additional funding is for pay adjustment, so it can certainly be used specifically for pay increase. This is what we call a specific provision for a specific use. As such, why would the Secretary interpret it as interfering with the autonomy of the institutions? Is the Secretary still upset about the problem or accusation of interfering with the autonomy of the institutions, such that he has dodged the responsibility of monitoring the use of this provision?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, we have all along respected the autonomy of these institutions. I am not sure if Mr CHEUNG Man-kwong wants to interfere with

the autonomy of the institutions in this respect. We have full confidence in these institutions, knowing that they work in a fashion that is open, fair and just. In such a context, we do not find it necessary to direct the institutions how to use the funding. Very often if we gave directions to these institutions on their financial matters, some might say that we were trying to "dry up" the funding of these institutions or things like that. We have not, did not, and will not do this. Hence, we will not direct these institutions what to do.

PRESIDENT (in Cantonese): Fifth question.

Remarks of NPCSC Chairman

5. **MR JAMES TO** (in Cantonese): *President, at the Seminar in Commemoration of the 10th Anniversary of the Implementation of the Basic Law held on 6th of this month, the Chairman of the Standing Committee of the National People's Congress (NPCSC) remarked that (and I quote) "the high degree of power of the Hong Kong Special Administrative Region (SAR) was not inherent to Hong Kong but granted by the Central Authorities.....the SAR has as much power as that granted by the Central Authorities.....the question of so-called residual power does not exist" (end of quote), while a law academic from the Mainland pointed out that (and I quote) "balanced participation should remain an important consideration when we discuss the issue of constitutional development. Everyone, be they rich, of the middle class or poor, should have opportunities to participate" (end of quote). In this connection, will the Government inform this Council whether:*

- (a) *it has sought clarification from the Central Authorities if the remarks made by the NPCSC Chairman mean that the Central Authorities may, at any time, take back the power that has already been granted to the SAR; if it has, of the response received;*
- (b) *it has assessed if the remarks made by the NPCSC Chairman will undermine Hong Kong's high degree of autonomy; if it has and the assessment result is in the affirmative, of the remedial measures; if the assessment result is in the negative, the reasons for that; and*
- (c) *it has assessed if the existing political system provides the rich with more opportunities to participate in politics than the middle class*

and the poor, and hence the principle of balanced participation has not yet been implemented; if it has and the assessment result is in the affirmative, of the improvement measures; if the assessment result is in the negative, the justifications for that?

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

- (a) The basic policies of the Central Authorities regarding Hong Kong have been fully reflected in the Basic Law. In fact, under the principle of "one country, two systems", the high degree of power enjoyed by the SAR is conferred by the Central Authorities. For example, Article 2 of the Basic Law provides that the National People's Congress authorizes the SAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication.
- (b) The remarks made by the Chairman of the NPCSC reflect the principles and provisions in the Basic Law. The basic policies of the People's Republic of China regarding Hong Kong, that is, "one country, two systems", "Hong Kong people ruling Hong Kong" and a high degree of autonomy, have been implemented through the Basic Law and will not be changed. The comment that the NPCSC Chairman's remarks will undermine Hong Kong's high degree of autonomy is totally ungrounded.
- (c) The constitutional development in the SAR must comply with the basic policies of the People's Republic of China regarding Hong Kong, and the principles on constitutional development under the Basic Law, including meeting the interests of different sectors of society. In taking forward Hong Kong's democratic development towards universal suffrage, the SAR Government will ensure that the relevant principles in the Basic Law will be complied with.

MR JAMES TO (in Cantonese): *President, the Secretary mentioned in part (a) of the main reply that the power of the SAR is conferred by the Central Authorities. My supplementary question is: Does this imply that the power*

conferred can be taken back by the Central Authorities? Or, what is the relevant basis if it cannot be taken back according to the Government's understanding?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, since the '80s, the Central Authorities have clearly stated that Hong Kong would be established as a special administrative region, which would implement a series of basic policies including "one country, two systems", a "high degree of autonomy" and "Hong Kong people ruling Hong Kong". This is the national policy that will not be changed, and this set of basic policies has been set out in both the Sino-British Joint Declaration and the Basic Law. Our country is a great nation, and the undertakings made by the Central Government will be honoured. As we can see, many of our systems are able to continue operating since the reunification of Hong Kong. For example, in terms of the rule of law, the Court of Final Appeal has been established; in terms of finance, our financial system is capable of fending off the financial crisis; and on the international front, we remain as a member of the World Trade Organization, able to organize international conferences. In recent years, while Hong Kong was busy struggling through economic downturns, the Central Authorities have introduced some new initiatives for the SAR within the parameters of the Basic Law, for example, the signing of CEPA, the launching of the Individual Visit Scheme, and the issuance of Renminbi bonds in Hong Kong which was just announced yesterday. Therefore, both the Central Government and the SAR Government will definitely strive to achieve the ultimate aim of universal suffrage.

MR JAMES TO (in Cantonese): *I only asked whether or not the power conferred by the Central Authorities will be taken back, but not whether or not more power will be granted. The Secretary should answer "yes" or "no". Will the power not be taken back?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the basic policies laid down by the Central Authorities for the SAR regarding "one country, two systems", "Hong Kong people ruling Hong Kong" and a "high degree of autonomy" will not be changed.

MR JAMES TO (in Cantonese): *My follow-up question is whether the power will be taken back, but not whether there will be any change.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I said that there will not be any change and the relevant foundations had been laid down in the Sino-British Joint Declaration in the '80s and in the Basic Law in 1990.

MR TAM YIU-CHUNG (in Cantonese): *Regarding the constitutional development of the SAR, a recent public opinion poll showed that a large proportion of respondents support a mechanism of advance screening and communication in the discussion on the election of the Chief Executive by universal suffrage. In this connection, has the Secretary studied this public opinion poll and whether it will serve as reference in future?*

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, can you relate your supplementary question to the main question and the Secretary's reply?

MR TAM YIU-CHUNG (in Cantonese): *Given that the Secretary has mentioned the SAR's constitutional development earlier, and the constitutional development of the SAR and the election of the Chief Executive by universal suffrage..... The development concerned actually involves the election of the Chief Executive by universal suffrage. Since information on the election of the Chief Executive by universal suffrage was also made available recently, I therefore asked if the Secretary had seen or considered such information.*

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, I consider it more appropriate to put this supplementary question in the context of the main questions previously raised. I therefore consider that there is no need for the Secretary to answer this supplementary question.

MR SIN CHUNG-KAI (in Cantonese): *President, WU Bangguo, the NPCSC Chairman, remarked that the power rests with the Central Authorities. I wish to follow up because the reply given by the Secretary just now in response to Mr James TO's follow-up question is that the policy will not be changed. Yet, is it necessary to amend the Basic Law if the Central Authorities really have to take back the power that has been granted to the SAR Government? According to the Basic Law, any amendment must be made with the endorsement of a two-thirds majority of all the Members of the Legislative Council. In that case, may I ask whether it is necessary to amend the Basic Law if the Central Authorities really have to take back the power that has been granted to the SAR Government?*

PRESIDENT (in Cantonese): Can you try to rephrase your supplementary question? Because this question will become hypothetical so long as the word "if" is used, and I can hardly allow you to raise such a question.

MR SIN CHUNG-KAI (in Cantonese): *OK. My supplementary question is very simple. Is it necessary to amend the Basic Law if the Central Authorities really have to take back the power that has been granted to the SAR?*

PRESIDENT (in Cantonese): You still used the word "if". The main question asked, "if the remarks made by the NPCSC Chairman mean that the Central Authorities may, at any time, take back the power that has already been granted to the SAR", so you may ask whether or not there will be an amendment to the Basic Law when the power is being taken back.

MR SIN CHUNG-KAI (in Cantonese): *Fine, thanks for the President's help. Is it necessary to amend the Basic Law when the power is being taken back?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, Article 159 of the Basic Law clearly stipulates that "no amendment to the Basic Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong". Therefore, these basic policies will not be changed.

MR SIN CHUNG-KAI (in Cantonese): *I am asking about the process during which power is being taken back. While the policies laid down by the Central Authorities will remain unchanged, the NPCSC Chairman said that all power rests with the Central Authorities and can be taken back at any time. If this is the case, does it mean that the Central Authorities can simply ignore the Basic Law? Given that the Central Authorities may impinge on the power the Basic Law conferred on the SAR Government while taking back the power, does it mean that the Central Authorities would have amended the Basic Law de facto? If so, should the Central Authorities act in accordance with Article 158 of the Basic Law?*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, while the Central Authorities attach great importance to ruling the country according to law, the SAR Government also implements "one country, two systems" in accordance with the Basic Law. Why will there be such an amendment process if the basic policies cannot be changed?

MR FREDERICK FUNG (in Cantonese): *The NPCSC Chairman remarked that the power rests with the Central Authorities, in other words, the Central Authorities can grant us power. If I look at it from another perspective, does it mean that we can increase the power that the Central Authorities granted to us through persuasion, giving advices or making requests? If this is what it meant, what channels can be used? Are we going to gain more power through the NPCSC or the State Council? Or, what other means?*

PRESIDENT (in Cantonese): Mr Frederick FUNG, perhaps I am really not so smart today for I do not get what you wish to ask. Can you tell me in a simple way?

MR FREDERICK FUNG (in Cantonese): *The NPCSC Chairman said that the SAR Government has as much power as that granted by the Central Authorities, and the power rests with the Central Authorities. Of course, the Central Authorities have granted us some power according to the Basic Law. But what if we want more? What channels are available?*

PRESIDENT (in Cantonese): Secretary, please try to answer this because I find it very hard to decide whether this supplementary question is within the scope of the main question. Since I am unsure of it, the benefit of doubt will be given to Mr FUNG. Will the Secretary try to give a reply please? *(Laughter)*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I respect your decision. As you have allowed me to reply, I will try to do so. Article 20 of the Basic Law stipulates that "The Hong Kong Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the Central People's Government." Therefore, there are provisions in the Basic Law. Yet, the focus of our discussion today is the basic policies and the power that has been granted to the SAR according to the Basic Law.

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

MR FREDERICK FUNG (in Cantonese): *The Secretary has answered in a subtle way. What I mean is: Does he actually imply that the SAR Government can request an increase or expansion in power by means of Article 20 of the Basic Law?*

PRESIDENT (in Cantonese): This is not part of the supplementary question you asked earlier. In putting a follow-up question, you may only ask about the part of the supplementary question not answered.

DR KWOK KA-KI (in Cantonese): *President, the remarks made by NPCSC Chairman WU Bangguo are very important. However, after listening to the Secretary's reply, it seems that he is saying that the remarks are not so significant. There are two possibilities for this: firstly, NPCSC Chairman WU was firing away blank cartridges; if not, the remarks must have some other meanings. May I ask whether the NPCSC Chairman's remarks were made in the light of Chief Executive Donald TSANG's attitude towards universal suffrage as demonstrated recently — for example, he claimed to "do something big" with*

a view to thoroughly resolving the issue, which necessitated the NPCSC Chairman to make "a show of authority" to require him not to make any decision in relation to universal suffrage privately?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, firstly, the Central Government is very supportive of the appointment of Mr Donald TSANG as the third term Chief Executive, who has already been officially appointed. Secondly, the Chief Executive of the SAR Government will not deal with the issue of universal suffrage privately, but will address the issue of constitutional development in full compliance with the Basic Law. With the recognition of members of the public and the support of two thirds of Members of the Legislative Council, the proposal will be able to be implemented.

DR KWOK KA-KI (in Cantonese): *He did not make the decision privately. My supplementary question asked very clearly if this is "a show of authority" of the Central Authorities to require the Chief Executive to obtain their full recognition before deciding on the proposal of universal suffrage.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I can hardly see that this is "a show of authority". The Central Government has been very supportive of the Chief Executive's administration in accordance with the law.

MR ALBERT HO (in Cantonese): *Will the Secretary advise this Council whether or not the NPCSC will redefine the scope of the "high degree of autonomy" enjoyed by Hong Kong, after NPCSC Chairman WU Bangguo made his remarks, so as to take back some of the power that has been granted to Hong Kong by exercising the power of interpretation?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the Central Authorities as a whole, including the NPCSC, will act in

full compliance with the Basic Law. The long-term policies that have been laid down by the Central Authorities for Hong Kong since the '80s; the executive, legislative and judicial powers, and powers that have been granted to Hong Kong for dealing with external affairs, as well as the arrangements that have been made to maintain the various systems within Hong Kong, will not be changed.

MR ALBERT HO (in Cantonese): *Is "no" a more straightforward reply of the Secretary?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, in the few exchanges already made, I have reiterated that this basic policy will not be changed. How the NPC is going to exercise its power is a decision of the NPC itself. For the SAR Government, however, just as we have stated clearly in the past, the mechanism of interpretation would be handled with extra care and would not be activated lightly. Furthermore, while we are dealing with matters relating to our constitutional development, it is indeed of paramount importance to strive for a consensus in Hong Kong society — either among the general public or in this Chamber — by all means. Once a consensus is forged in the Hong Kong community, we may stand a higher chance of success in the discussion with the Central Authorities for endorsement of a set of proposals according to the Basic Law.

MS EMILY LAU (in Cantonese): *President, part (c) of the main question asks "whether it has assessed if the existing political system provides the rich with more opportunities to participate in politics than the middle class and the poor, and hence the principle of balanced participation has not yet been implemented". The Secretary, however, said that the current constitutional development does comply with the basic policies of the State and the principles of the Basic Law.*

President, as we all know, the rich is entitled to an additional vote under the existing constitutional design. While the Chief Executive will be returned by a small coterie of 800 people, whereby about 200 000 people can cast a vote, there are more than 3 million registered voters in Hong Kong. Is the reply given by the Secretary in part (c) of the main reply tantamount to telling bare-faced lies? How can this comply with the principle of balanced participation, President?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, in my opinion, perhaps Ms Emily LAU herself is the one who has neglected some facts. It is because both the Election Committee and functional constituency seats cover people from different strata of the community and different sectors. Among them there are, of course, representatives of various chambers of commerce, as well as representatives of various trade unions and professional bodies. Apart from professional organizations like the three professions that usually prosper in Hong Kong, teachers, nurses, other representatives of the community, Honourable Members, as well as representatives of District Councils and the Heung Yee Kuk can also join the Election Committee. This enables the Election Committee and the legislature to be represented by people from all walks of life and different strata of the community, who will have their voices heard. As a result, the principle of balanced participation can be manifested.

MS EMILY LAU (in Cantonese): *My supplementary question is: While there are 3.2 million registered voters in Hong Kong, only a small group of them can enjoy extra voting rights. In other words, they are entitled to an additional vote when compared with those three-odd million people. How can this be regarded as balanced participation, President? My supplementary question is as simple and basic as this.*

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, Hong Kong has various kinds of elections currently. There are direct geographical constituency election and functional constituency election, where people can all participate in their operations. However, stagnant development is the last thing we would wish to see. In fact, it is our wish to see progress in Hong Kong's electoral system and democratization, otherwise, we would not have put forward the 2007 and 2008 constitutional reform package in 2005 nor initiated the discussions on the implementation of universal suffrage. Hong Kong should not come to a standstill, and progress should be made in respect of our electoral system and democratization. Members of this legislature represent different sectors where progress has been made. Be they the business sector, trade unions or professions, progress has been made. In

these circumstances, progress should also be made in the electoral system. For progress to be made, however, we must seek common grounds while preserving differences and abandon all prejudices.

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

EcoPark

6. **MR TAM YIU-CHUNG** (in Cantonese): *Phase I of the EcoPark in Tuen Mun was originally scheduled for commissioning at the end of last year, but it was not until May this year that the Environmental Protection Department (EPD) awarded three tenancy contracts. In this connection, will the Government inform this Council:*

- (a) *of the types of business to be operated by the aforesaid tenants, the number of people they will employ, and the anticipated time when they will commence operation;*
- (b) *of the anticipated time when all the lots in Phases I and II of the EcoPark will be leased out and put to use, the percentage of the final area to be rented out in the total area, the ultimate number of tenants, and the number of people they will employ; and*
- (c) *whether it will adopt measures to increase the number of jobs to be created by the EcoPark, including providing lots of smaller sizes to enable smaller recyclers to operate at the EcoPark and introducing "number of jobs to be provided" as one of the conditions for awarding tenancy contracts; if so, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Developing the EcoPark in Tuen Mun Area 38 is a major Government initiative for promoting circular economy. Our objective is to provide long-term land for the recycling and environmental industries at affordable rents and encourage them to introduce advanced technologies for

recycling locally generated recyclables into value-added products. These products will re-enter the consumption chain and promote the development of Hong Kong's circular economy. I would like to reply to the three parts of the question as follows:

- (a) Tenders for the tenancy agreements of the first batch of three lots in Phase I of the EcoPark were invited at the end of 2006 according to the target set in the 2006-07 policy agenda. The tenancy agreements were awarded in April this year and the successful bidders will recycle locally collected waste plastics (such as PET and HDPE), waste tyres and waste wood respectively into value-added products in the EcoPark. It is expected that the tenants will commence operation in next year and will employ over 100 skilled and non-skilled workers.
- (b) Tenancies of the remaining three lots in Phase I of the EcoPark will be invited by open tender in the coming two months and the tenancy agreements will be awarded within this year. It is expected that the tenants will commence operation between late 2008 and early 2009. Construction of Phase II of the EcoPark will commence in 2008. It is anticipated that tenders for the Phase II lots will be invited in 2009 and the tenants will gradually commence operation from 2010. Upon full completion, the entire EcoPark will provide a total of 14 hectares of rentable land (that is, 70% of the total area of the EcoPark), accommodate about 20 tenants and offer some 750 new jobs.
- (c) As I mentioned earlier, the objective of developing the EcoPark is to encourage the recycling and environmental industries to introduce advanced technologies to recycle locally generated recyclables so as to promote a circular economy. In order to achieve that objective, we must ensure that the lots provided in the EcoPark are of suitable sizes to enable tenants to operate in a cost-effective manner. From the Expressions of Interest exercise conducted last year, we observed that most recyclers interested in starting their recycling business in the EcoPark would require lot size ranging from 5 000 to 10 000 sq m. Taking the above factors into account, we offered one 9 500 sq m lot and two 5 000 sq m lots for the first batch lots of the EcoPark Phase I to meet the needs of recycling operations of different types and scale.

As the objective of setting up the EcoPark is to promote a circular economy in Hong Kong, we consider factors such as the tenderers' experience, the degree of value-addition and outlets of their products, and the technologies to be introduced, and so on. In selecting tenants to ensure that they can achieve our waste management objectives. For each lot, we have also prescribed minimum capital investment and minimum throughput of materials to be processed as part of the lease conditions to ensure that the scale of operation of the recycling and environmental industries in the EcoPark will reach a certain level. Therefore, we do not consider it necessary to introduce "number of jobs to be provided" as one of the criteria for evaluation of tenders.

In fact, the recycling and environmental industries and the waste recovery industry are complementary businesses. The progressive establishment of the recycling industries in the EcoPark will provide a reliable and stable outlet for locally collected recyclables. This in turn will bring business opportunities for the local waste recovery industry and encourage operators to employ more staff to cope with the increasing demand for recyclables.

MR TAM YIU-CHUNG (in Cantonese): *President, I would like to thank Secretary Dr Sarah LIAO for her contribution to Hong Kong in the past, particularly in relation to environmental protection.*

However, as the Secretary said in the main reply, the objective of setting up the EcoPark is to encourage the development of high value-added and high-tech recycling industry instead of environmental industry of simple processing. The original intention is laudable. However, the present progress seems to be rather slow. Is it due to a lack of large-scale environmental industry in Hong Kong, especially an inadequacy of technical workers who need to be highly skilled? Are these factors affecting the progress? What are the considerations of the Government?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, the setting up of the EcoPark is in fact a crucial part of

the municipal solid waste management stipulated in the policy agenda. Regarding Mr TAM's main question about the original schedule for the commissioning of the EcoPark at the end of 2006, it was a target laid down a long time ago before land was set aside for this purpose. I think the delay is due to land allocation rather than shortage of manpower.

After learning that the EcoPark will be set up, we have not fallen behind the schedule according to the timetable laid down in the policy agenda when it was compiled. We wish to introduce some high-tech and high value-added processes so that value-added products..... we have also taken a look at many different industries. For instance, the electronics industry will require very huge capital input and a large quantity of recyclables such as waste computers and obsolete electronic devices. This is not merely a technical problem. Rather, investment in the technology concerned will only be viable when the amount of waste is very huge. If the quantity of such waste in Hong Kong is not sufficient, the import and export of electronic waste will pose a serious problem. Neither do we wish to see the free importation of such waste into Hong Kong.

So, in view of these problems, the first three projects are relatively simple. Regarding the more advanced technologies, the work will be divided into two phases. During the second phase, we may be able to attract some more advanced technologies to deal with some modernized products as we will be able to give more detailed consideration to these problems after accumulating more experience, apart from actual involvement in operation. Besides, when the volume of waste is not sufficient, the problem we will face in future is how to work together with the Mainland.

MR LAU WONG-FAT (in Cantonese): *Madam President, in view of the Government's promise that efforts in environmental protection will be stepped up, can the Government inform this Council, as the commissioning of the EcoPark in Tuen Mun has been delayed, what remedial measures will be adopted to promote and enhance the use of the facility and expedite the development of our environmental industry?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I think Mr LAU's supplementary question is to urge us to expedite our work.

In fact, we are working at full stream. After the completion of the EcoPark, tenants will be allowed to move in and build their plants. They are required to start operation, or the waste recycling process, in one year. So, we are pressing them very hard. In fact, with the commencement of their tenancy agreements in May or so, they have to submit applications and build their plants within a year. Thus, it is not a simple task although their plants may not be too complicated.

I hope Mr LAU can rest assured as my colleagues are now working at full stream in promoting circular economy with the dual purposes of protecting scarce natural resources and mitigating pollution.

PROF PATRICK LAU (in Cantonese): *President, I am also glad and grateful to the Secretary for her efforts in fighting for the development of EcoPark which is very important to waste recycling.*

I would like the Secretary to clarify the points in part (a) of the main reply, in which it is said that waste plastics, waste tyres and waste wood will be recycled into value-added products. May I ask what these products are and whether these products are readily available for use in our daily life? I want to know what these products are.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, first of all, regarding tyres, tyres are difficult to handle. In the production process..... traditionally, tyres are reduced to powder by grinding in order to produce new tyres. The process is highly polluting and workers from the plant are all covered by tyre soot.

Now a different approach has been adopted in which the tyres will be melted to produce floor tiles. At present, the soft floor tiles for covering the area of playground where slides and swings are provided for children are made of tyres. This tyre processing company not only does business in Hong Kong but also has sufficient stocks for export. However, as it has only signed a short-term tenancy agreement and the scale of production here is not big enough, it hopes to expand the local production plant and hire more workers so that products can be directly exported to Malaysia, Southeast Asia and even the Mainland where it has set up a plant as well.

The second category is plastics. PET and HDPE I just mentioned are used for making plastic bottles and plastic containers for washing powders. After classification, these materials will be melted and rolled into bars before being cut into particles. And these are classified plastic particles, some of which will be processed in Hong Kong while some will be transferred to other places as raw materials.

The last category is waste wood planks. I think Mr LAU is also very clear about the local construction sites. Now no one is willing to use pallets nowadays. The materials will be discarded after use because of the expensive storage costs. So, after the planks are collected from the construction sites — we also have a sorting plant for sorting wastes which is charging a relatively lower fee since fees have been imposed on construction wastes. So, everybody sends the planks there and the volume is very large. If these wastes are transported to other places, it is not cost-effective in terms of freight alone. Thus, they are now shredded into chips or small wooden particles before being pressed into usable construction materials. This is the third category of material.

MR WONG KWOK-HING (in Cantonese): *President, I am also very grateful to the Secretary for her contribution to improving Hong Kong's environment in the past. I also hope that Dr LIAO will continue to make contribution to environmental protection in other capacity in future.*

Through the President, I would like to ask the Secretary a question. At present, the EcoPark can handle three categories of wastes which are waste plastics, waste tyres and waste wood. But there are more than these three categories of waste in Hong Kong. Will the future development of the EcoPark cover a wider range of wastes? For instance, batteries, kitchen waste, scrap metals — there are various sorts of scrap metals — through the President, may I ask the Secretary whether the types of wastes will be increased and made more comprehensive so that the service life of landfills can be extended?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I thank Mr WONG for his question. As in my brief explanation just now, the fact that three categories of wastes have been chosen in phase I does not mean that the EcoPark is restricted to handling these three categories of wastes.

As I said just now, if the volume of electronic waste is large enough — of course, the demand of the industry now is very huge. However, under the present circumstances of Hong Kong, the scale is not big enough even if some investors are interested in developing the industry. Besides, the same case applies to batteries. In the handling process, the useful metals in the batteries are extracted before the toxic or harmful substances are treated, thus involving a relatively high-tech operation.

At present, batteries collected in Hong Kong will be sent to Korea for processing. Tenders have also been invited and there are such plants in Japan and Korea. Should import of waste batteries be allowed in view of insufficient volume of batteries collected in Hong Kong? This issue should be discussed in order to ensure acceptance by the community. Moreover, what regulatory regime should be imposed is another question. Other metals such as aluminum utensils or other nonferrous metals are also one of our considerations.

Besides, land has been rented on short-term leases by people from many different industries mentioned by Mr WONG. We hope that they can make use of our EcoPark if we want them to produce high valued-added products. The EcoPark will certainly be open to more industries in future.

MR WONG KWOK-HING (in Cantonese): *I asked about kitchen waste. I hope the Secretary can supplement.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): This is also a headache of the EPD because it is exactly the cause leading to the growth of municipal solid waste. When the economy is improving, restaurant patrons will order more food which will be discarded if not consumed. So, I would like to appeal to everyone that excess food should be taken home. A place far away from residential areas is needed for handling kitchen waste because of the odor, in addition to the consideration of how such waste should be collected because it is a problem involving public hygiene. If people are told to store the kitchen waste, how frequent should such waste be collected? We are now discussing the issue with the catering industry to see if a pilot scheme can be implemented in places where the density of restaurants is high. This is certainly the next factor to be considered by the EPD.

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

MISS CHAN YUEN-HAN (in Cantonese): *President, the Secretary's reply is very familiar to me, reminding me of the past discussion on wastes..... at that time we were discussing the provision of land by the Government. The Secretary is very sensitive and immediately got the point when Mr WONG Kwok-hing mentioned kitchen waste. She is well-versed in the issue. We are very glad to see the Secretary's professionalism.....*

MR WONG KWOK-HING (in Cantonese): You have not put on the microphone.

MISS CHAN YUEN-HAN (in Cantonese): *Sorry, President. I very much appreciate the Secretary's professionalism because she is very sensitive to the subject in her discussions with me about environmental protection on numerous occasions. I hope she will continue to work for Hong Kong.*

The problems just mentioned by the Secretary are also the objectives that the Federation of Trade Unions hoped to be achieved by the Government because recycling is very important. We welcome the development of the EcoPark in Tuen Mun by the authorities. I have been telling the Secretary that it will be a very good idea if there is a park for collecting wastes, but the problem which remains unsolved is whether there is a midway station for their transfer.

PRESIDENT (in Cantonese): What is your supplementary question?

MISS CHAN YUEN-HAN (in Cantonese): *President, I am coming to my supplementary question. (Laughter)*

Regarding kitchen waste, I agree that there is a technical problem, including the soya bean residue from bean curd producers when there are no pig farmers now. It is also a problem, as the Secretary said. Just now the Secretary said that the EPD is now considering it. May I ask how long it will take? Regarding the wet wastes produced by the public, such as kitchen waste

or bean curd residue, what is the timetable drawn up by the Government? What is the land earmarked for midway recovery? President, thank you for your indulgence.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I know that Miss CHAN will certainly ask about the timetable. We are now conducting a pilot scheme at the refuse transfer station at Kowloon Bay where kitchen waste is collected for decomposition. We will then study how to make use of the fertilizer and methane gas produced. However, we do not have any timetable at the moment because we have to identify a suitable place for long-term operation.

We have an idea. At all of our future refuse transfer stations — if work is properly organized, there will be space available for waste processing and onward transportation to the EcoPark in Tuen Mun because there are barges which are usually associated with piers. We are now making the plan but, sorry, I cannot give Miss CHAN a timetable. But I believe the EPD colleagues will continue to work very hard on this.

Here, I would like to thank Mr TAM, Mr WONG and Miss CHAN for their encouragement. It is not only a job for me. I hope everyone will do his part in environmental protection in his daily life and work. I am not asking people to be Puritans, refusing to eat anything or do anything. But I am sure that we will do much better in environmental protection with public support.

Here, I would like to thank the Legislative Council. Under the leadership of the President, we have been able to express our views and discuss various matters in an orderly and rational manner. And Legislative Council Members have also offered a lot of constructive comments. Through questions, we can understand people's aspirations and dissatisfactions, or what should be further explained to them. The Council is certainly providing a forum for exchange of views to assist the Government in the determination of policies. The past five years have been a very good experience for me and I thank all Members for that.

PRESIDENT (in Cantonese): I would like to thank Secretary Dr Sarah LIAO for her involvement in the Legislative Council and her frank exchanges with Legislative Council Members.

Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Access to Government Services on Internet**

7. **DR DAVID LI:** *President, in September 2006, the Government soft launched a new Internet portal, GovHK (website address: <www.gov.hk>), to provide the public with one-stop access to government services, as one of the aims. However, it is noted that members of the public who wish to renew their driving licences through the Electronic Service Delivery life (ESDlife) website, to which the portal offers convenient access, may do so only if they are holders of a digital certificate (such as the e-Certs issued by the Hongkong Post), and the relevant application forms are unavailable on the ESDlife website for downloading. In this connection, will the Government inform this Council:*

- (a) of the retention rate to date for the e-Certs embedded in the Smart Identity Cards upon the expiry of the relevant free usage periods;*
- (b) whether it will consider, by making reference to the e-Tax Password system adopted by the Inland Revenue Department, permitting members of the public, whose identity have been authenticated by a password of their choice, to access various government services on the Internet; and*
- (c) whether it will consider providing on the ESDlife website the relevant forms for downloading to give members of the public the choice of applying for government services through the post, thus saving the payment for and the trouble of using the digital certificates?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY:

President, since March 2007, the Transport Department (TD) has been sending reminder notices, together with application forms, to holders of driving licences that would soon expire. Licence holders could renew their licences by completing the application forms received and returning them with the required supporting documents and licence fee to the TD by post or through the drop boxes located at four licensing offices and selected post offices. Those who wish to renew their licences in person at the licensing offices could use the online service on GovHK to book an appointment. Holders of valid digital certificates issued by recognized certification authorities may also submit their applications

online. Besides, the TD is planning to allow licence holders to use a Personal Identification Number to access its online service for driving licence renewal.

In response to Dr David LI's specific question:

- (a) Since July 2003, the Hongkong Post Certification Authority (HKPCA) has issued a total of 1.26 million personal e-Certs embedded in Smart Identity Cards with a three-year free usage period. Between July 2006 and May 2007, about 340 000 of these e-Certs for Smart Identity Cards have expired, out of which 946 have been renewed by Smart Identity Card holders. The retention rate during this period is about 0.3%.

The Government reviewed its approach to providing the e-Cert services in 2005, culminating in the award of a contract by the HKPCA in 2006. One of the responsibilities of the contractor, which has started to operate the e-Cert services for the coming four years until 31 March 2011, is to address the barriers to e-Cert adoption and develop new value-added services to promote the utilization of e-Certs.

- (b) Authentication of identity by one government department may not be applicable to the online services of other departments. To help departments conduct the necessary risk assessment and choose an appropriate authentication method for their online services, the Office of the Government Chief Information Officer issued a Risk Assessment Reference Framework for Electronic Authentication in October 2004 for their reference. The levels of security afforded by a password system and the use of a digital certificate are different. Departments may permit Internet users to access their services over the Internet through a password system if that meets their security, operation, legal and business requirements.
- (c) The *ESDlife* portal currently provides a hyperlink to the TD website, where application forms for driving licence renewal are available for download. Because the contract between the Government and the *ESDlife* operator will expire in January 2008, arrangements have been made to link the Driving Licences and Tests sub-section of the Transport and Motoring section on GovHK, the new one-stop government portal, to the TD website to facilitate downloading of the relevant forms.

Cardiac Diseases

8. **DR YEUNG SUM** (in Chinese): *President, it has been reported that the number of people undergoing Percutaneous Transluminal Coronary Angioplasty (commonly known as "balloon angioplasty") has increased in recent years. In this connection, will the Government inform this Council:*

- (a) *whether the number of people diagnosed with coronary and other heart diseases has been on the rise in recent years and whether there is a trend of occurrence of the diseases at a younger age; if so, of the details; whether it will conduct a large-scale survey to find out the cardiac health of the Hong Kong population;*
- (b) *of the respective expenditures on the prevention, examination and treatment of various heart diseases by the public health care system in each of the past three years; and*
- (c) *whether it will, following other countries' practice, consider launching large-scale community-wide campaigns and implementing corresponding measures for improving the cardiac health of the public, such as setting target morbidity and mortality rates of the diseases, allocating resources for the examination, early diagnosis and treatment of the diseases, as well as strengthening health education and promotional activities to avoid excessive intake of low-density lipoprotein cholesterol by the public, thereby reducing their risks of developing the diseases?*

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

- (a) According to figures from 2001 to 2005, the age-specific mortality rate of heart disease for people aged between 20 and 44 did not show an upward trend. In order to obtain the health profile of our population, the Department of Health (DH) has carried out population-based health surveys. From the Population Health Survey conducted in 2003-2004, it was calculated that the prevalence rate of coronary heart diseases (CHD) among local people aged 15 and above was 1.6%. The DH has also commissioned The Chinese University of Hong Kong to conduct a

survey on cardiac health in order to examine the prevalence of the cardiovascular diseases and the related risk factors.

- (b) The DH has strived to facilitate the prevention of cardiovascular diseases and other chronic illnesses through the promotion of a healthy lifestyle and tobacco control. The expenditures arising from these activities in 2004-2005, 2005-2006 and 2006-2007 were \$60.40 million, \$72.40 million and \$73.70 million respectively. In addition, various health service providers under the DH with children, youth, adults and the elderly as their clients have also organized a wide array of activities oriented towards the prevention of chronic illnesses and health promotion.

As regards the Hospital Authority, the treatment, examination and prevention of cardiovascular diseases are normally conducted as integrated services and therefore a breakdown of the respective expenditures is not available. The major expenditures on cardiovascular diseases over the past three years are as follows:

	<i>Expenditure (\$ million)</i>		
	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>
1. In-patients			
(i) Coronary Care Unit			
(ii) Cardiothoracic Surgery Department	1,038	969	951
(iii) General Medical Ward			
(iv) Other Specialties			
2. Surgery Intervention Percutaneous coronary intervention surgery	Included in hospitalization cost (the membrane stent used in the surgery is a self-financed item)		
3. Fibrates for prevention of ischaemic heart disease (Statins)	87	82	41 ^(Note)

Note: The reduction of expenditure is due to a decrease in cost as a result of the fact that fibrates (Statins) have come off-patent.

- (c) The DH will conduct surveys as well as monitor the morbidity and mortality rates of cardiovascular diseases in the population of Hong Kong, with a view to developing its work strategies for the prevention and control of cardiovascular diseases.

For the prevention of cardiovascular diseases, it is most important to foster healthy living habits. According to the estimation of the World Health Organization (WHO), over 70% of new cases of CHD are related to smoking, unhealthy diet and inadequate exercise. The WHO therefore advises people to guard themselves against cardiovascular diseases through the adoption of a healthy lifestyle, such as refraining from smoking, doing appropriate amount of exercises daily, taking healthy diet and maintaining a suitable body weight. In view of this, the DH will continue to promote a healthy lifestyle to the public.

At present, the screening for cardiovascular diseases is not foolproof and has certain limitations, such as the occurrence of false negative or false positive results. False negative occurs when the test cannot detect the presence of disease in a person with that particular disease, resulting in delay in treatment. False positive occurs when the test classifies a healthy person to have a particular disease, thereby causing unnecessary anxiety and follow-up tests. Unnecessary check-ups are more than a waste of money and time. They may even do harm to one's health. Therefore, we have no plans to conduct any comprehensive screening for cardiovascular diseases for the time being.

Having regard to the above limitations of screening, many countries, such as the United Kingdom, the United States and Singapore, have mainly followed a policy of prevention and monitoring to reduce the CHD risk factors.

The DH has been using various means, such as roving exhibitions, the website of the Central Health Education Unit and all sorts of publications, to provide the public with information on the prevention of cardiovascular diseases and healthy lifestyle. On tobacco control, the Smoking (Public Health) (Amendment) Ordinance 2006 has expanded the statutory no smoking areas to include all indoor workplaces and public places, as well as many outdoor areas such as public beaches, escalators, hospitals, schools and the Hong Kong Wetland Park. The DH is also offering smoking cessation service to the public. For promotion of a healthy eating habit, the DH has launched an

"EatSmart@school.hk" campaign and a "Two Plus Three Every Day" campaign¹. In addition, the "Exercise Prescription Project" is also in full swing. Through the project, the DH joins hands with medical associations and community organizations in promoting physical activity to the public.

¹ To promote health, the DH is running the "Two Plus Three Every Day" campaign to encourage people to eat at least two servings of fruits and three servings of vegetables as part of a balanced diet every day.

Conducting Activities in Shopping Malls Under The Link Management

9. **MR LAU WONG-FAT** (in Chinese): *President, many District Council (DC) members, whose constituencies have public housing estates (PHEs), and charitable organizations have pointed out that over the years, they have often conducted activities under the meet-the-public scheme (including distributing DC members' work reports and collecting signatures) as well as charity sales in shopping malls of PHEs, but after The Link Management Limited (The Link) has taken over the management of shopping malls of PHEs, it forbids them to conduct the above activities in such malls. In this connection, will the Government inform this Council:*

- (a) *whether it knows which shopping malls of PHEs under The Link's management still allow such activities to be conducted therein, and list the names of such shopping malls according to the types of activities (that is, charity sales or activities under the meet-the-public scheme); and*
- (b) *before handing over the management of shopping malls of PHEs to The Link, how the Government ensured that The Link would fulfil its corporate responsibility and foster community harmony in managing the shopping malls concerned, particularly when processing applications in relation to the above two types of activities often held in the shopping malls of PHEs?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): President, upon its public listing on 25 November 2005, The Link Real Estate Investment Trust (The Link) has become a private entity, whose business strategies and day-to-day operations are entirely independent of the Hong Kong

Housing Authority (HA). So long as the operations of The Link comply with the relevant legislation, conditions of the Government leases, and terms of the covenants and agreements made between The Link and the HA, the Government and the HA will not intervene in The Link's day-to-day management and business strategies.

Under a covenant made between the HA and The Link, The Link shall continue to let certain floor area in prescribed shopping centres at concessionary rent to non-profit-making organizations operating social welfare or education facilities. It is for The Link to determine the arrangements for DC members or charitable organizations to hold activities in The Link's shopping centres. According to the information provided by The Link to the Legislative Council Panel on Housing in April 2007, The Link has from time to time provided venues in its shopping centres free of charge to community groups for holding various community events such as charity fund-raising, civic education, cultural promotion, health and environmental education activities. The Link has also organized charity activities in partnership with social service and environmental groups and donated the funds so raised to charities. The Government does not have specific information on the shopping centres where The Link allows such activities to take place. However, according to information provided by The Link, in 2006 The Link provided venues free of charge for 2 237 activities organized by non-governmental organizations.

If DC members or charitable organizations intend to organize community or charity activities in PHEs, they may apply to the Housing Department (HD) for use of common areas in PHEs or shopping centres under the HA, apart from the shopping centres under The Link. Where circumstances and other factors permit, the HD will endeavour to facilitate the conduct of the activities as far as possible.

Private Residential Care Homes for Disabled

10. **DR FERNANDO CHEUNG** (in Chinese): *President, regarding the management and information about the residents and staffing position of the existing 37 private residential care homes for persons with disabilities (PRCHDs) in the territory, will the Government inform this Council:*

- (a) *whether it knows the breakdown on the number of PRCHD residents by their characteristics set out below:*

<i>Type of PRCHD</i> <i>Number of residents</i>	<i>Five PRCHDs which have successfully joined the Government's Voluntary Registration Scheme (VRS)</i>	<i>10 PRCHDs which are carrying out improvement works</i>	<i>22 PRCHDs which have withdrawn their applications or refrained from joining VRS</i>
<i>Gender:</i> <i>Male</i> <i>Female</i>			
<i>Age group:</i> <i>Below 18</i> <i>18 to 44</i> <i>45 to 60</i> <i>Above 60</i>			
<i>Type of disability:</i> <i>Mildly mentally handicapped</i> <i>Moderately mentally handicapped</i> <i>Severely mentally handicapped</i> <i>Psychosis</i> <i>Physical disability</i> <i>Visually impairment</i> <i>Hearing impairment</i> <i>Others</i>			
<i>Type of service received:</i> <i>Home-based training and support service</i> <i>Community rehabilitation day service</i> <i>Sheltered workshop service</i> <i>Day activity centre service</i> <i>Integrated Vocational Rehabilitation service</i> <i>Skills training</i> <i>Others</i>			

- (b) *how the Government monitors the drug management of the above PRCHDs; and whether there were any incidents of wrong dispensation of medicines by these PRCHDs in the past three months; if so, of the details and remedial measures;*
- (c) *whether the Government has monitored the meal arrangements in the above PRCHDs; if it has, please provide the menu and the nutrition information for a day of the above five PRCHDs which have successfully joined VRS; whether these PRCHDs have any residents who have swallowing difficulties or need help when drinking or eating; if they have, of the number of such residents and how PRCHDs assist them in drinking and eating;*
- (d) *of the existing numbers of staff (including both part-time and full-time) in each of the above PRCHDs which have successfully joined VRS, and the respective manpower ratios of social workers, nurses and other nursing staff to PRCHD residents; and*
- (e) *of a breakdown, by the type of PRCHDs in part (a) above, of the number of work injuries in the above 37 PRCHDs as well as the number of in-patient and accident and emergency attendances of PRCHD residents in the past five years?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese):
President, regarding Dr Fernando CHEUNG's question on the VRS for residential care homes for persons with disabilities currently implemented by the Social Welfare Department (SWD), our reply is set out below:

- (a) The following is the breakdown of the number of residents of PRCHDs in Hong Kong:

<i>Type of PRCHD</i>	<i>Five PRCHDs that have successfully joined the VRS (as at 20 June 2007)</i>	<i>10 PRCHDs that are carrying out improvement works (according to the information provided by the PRCHDs in their VRS application forms)</i>	<i>22 PRCHDs that have withdrawn their applications or did not apply for the VRS</i>
<i>Number of residents</i>			
<i>Gender:</i>			
Male	184	511 (only the total no. of residents is available)	relevant statistical data not available
Female	145		

<i>Type of PRCHD</i> <i>Number of residents</i>	<i>Five PRCHDs that have successfully joined the VRS (as at 20 June 2007)</i>	<i>10 PRCHDs that are carrying out improvement works (according to the information provided by the PRCHDs in their VRS application forms)</i>	<i>22 PRCHDs that have withdrawn their applications or did not apply for the VRS</i>
<i>Age group:</i> Below 18 18 to 44 45 to 60 Above 60	2 124 191 12	relevant statistical data not available	relevant statistical data not available
<i>Type of disability:</i> Mildly mentally handicapped Moderately mentally handicapped Severely mentally handicapped Mental illness Physical disability Visually impairment Hearing impairment Others	14 18 10 259 4 1 1 22	Total no. of persons with mental handicap: 183 Total no. of persons with both mental handicap and mental illness: 70 224 21 Persons with visual impairment, hearing impairment and/or others: 13	relevant statistical data not available
<i>Type of service received:</i> Home-based training and support service Community rehabilitation day service Sheltered workshop service Day activity centre service Integrated Vocational Rehabilitation service Skills training Others	16 11 42 46 11 11 0	89 0 97 37 2 46 56	relevant statistical data not available

- (b) Staff of the Registration Office of Private Residential Care Homes for the Disabled (the Registration Office) under the SWD, including registered nurses, will carry out inspections at registered PRCHDs on a regular basis (at least once every three months) to monitor their drug management, including checking whether the PRCHDs have handled and dispensed drugs in compliance with appropriate procedures and maintaining the necessary records, so as to minimize the risks of wrong dispensation of medicines. Where necessary, they will also give the PRCHDs professional advice to improve their drug management system.

For the PRCHDs now carrying out the necessary improvement work, staff of the Registration Office will follow up the progress of work and pay visits to them. At the same time, registered nurses from the Registration Office will inspect the drug management of these PRCHDs and help them enhance their quality of services on this front.

With regard to the PRCHDs that have not applied for the VRS, staff of the Planning and Co-ordinating Teams in various districts and the Registration Office under the SWD will take proactive actions by paying regular visits to them and giving them advice on their drug management. Moreover, the Registration Office will also organize regular training courses and workshops on drug management for all relevant staff of the PRCHDs, with a view to enhancing their drug management skills.

In the past three months, the SWD has not received any report of wrong dispensation of medicines by these PRCHDs or complaint against them.

- (c) For the five PRCHDs which had successfully joined the VRS, registered nurses of the inspection team from the Registration Office will study the menu of these PRCHDs during their inspection visit to assess whether their meals can offer a balanced diet and whether preserved or canned food is frequently used as ingredients of their recipes. The staff from the Registration Office will give advice where necessary. A sample menu for a day of each of the five registered PRCHDs are at Annex A.

For the other PRCHDs, registered nurses of the Registration Office and staff of the Planning and Co-ordinating Teams in various districts will examine the meals prepared by these PRCHDs and give on-the-spot advice during their visits to ensure a balanced diet for the residents.

A total of three residents in the five registered PRCHDs are reported to have swallowing difficulties or need help when drinking or eating. The PRCHDs have served them with minced food and provided them with feeding service in every meal.

- (d) According to the staffing establishment set out in the Code of Practice for Residential Care Homes for Persons with Disabilities, the five PRCHDs which have successfully registered under the VRS have all complied with the basic staffing requirements for relevant homes (as in Annex B).
- (e) None of the five PRCHDs which have successfully registered under the VRS have kept any detailed records of work injuries in the past five years but three cases of work injuries were reported last year. The SWD does not maintain a record of the number of work injuries in the remaining 32 PRCHDs. Last year, the reported numbers of in-patient and accident and emergency attendances of the residents of the five PRCHDs successfully registered under the VRS were 182 and 71 respectively. The SWD does not maintain a record of the corresponding figures of the remaining PRCHDs.

Annex A

Comfort Rehabilitation Home Menu

<i>Breakfast</i>	<i>Lunch</i>	<i>Dinner</i>	<i>Night Snacks</i>
Oatmeal + Egg	Chicken Claws, Black Eye Beans and Octopus Soup 1. Steamed Shredded Pork with Chinese Preserved Cabbages 2. Fried Pork Slices with Celery and Cashew Nuts Fruits	1. Pork Chops with Onions in Tomato Sauce 2. Fried Seasonal Vegetables with Garlic	Soybean Milk + Biscuits

Happy Home For The Healthy Care
Menu

Saturday

Breakfast: Soybean Milk
Barbecued Pork/Sweet Paste Bun

Lunch: Chicken Claws, Peanuts and Black Eye Beans Soup
Steamed Minced Pork with Chinese Preserved Cabbages
Seasonal Vegetables

Dinner: Chicken Claws, Peanuts and Black Eye Beans Soup
Curry Pork Chops
Vegetables

Ming Sum Home (Tuen Mun)
Nutritious Menu

Breakfast: Congee with Lean Meat and Preserved Duck Eggs
Bread with Jam

Lunch: Fried Garoupa Slices in Tomato Sauce
Chicken Claws with Seasonal Vegetables
Tomatoes, Potatoes and Pork Ribs Soup
Rice/Congee
Fruits

Afternoon Cake/Biscuits

Tea: Tea/Water
Sweet Soup or Chinese Herbal Tea provided every Sunday

Dinner: Steamed Eggs with Minced Meat
Fried Chinese Flowering Cabbages with Pork Slices
Rice/Congee

Remarks: Residents may request biscuits or dim sum from staff members if in need.

Oi Lok Home
Menu (Fourth week)

<i>Day</i>	<i>Breakfast</i>	<i>Lunch</i>	<i>Afternoon Tea</i>	<i>Dinner</i>
Monday	Congee with Lean Meat and Preserved Duck Eggs Steamed Pork Balls	Steamed Spare Ribs in Garlic and Black Bean Sauce Boiled Headed Lettuces, Peanuts, Black Eye Beans, Papaya and Pig Bones Soup	Red and Green Beans Sweet Soup	Steamed Fresh Fish with Gingers and Spring Onions Boiled Shanghai White Cabbages Seasonal Fruits
Tuesday	Macaroni with Ham and Shredded Meat	Steamed Chicken with Black Fungi Boiled Seasonal Vegetables Pumpkins, Carrots and Pig Bones Soup	Tea Biscuits	Bean Curds with Shredded Salty Fish and Diced Chicken Boiled Headed Lettuces Seasonal Fruits
Wednesday	Congee with Dried Vegetables and Salty Pig Bones Barbecued Pork Buns	Stewed Streaky Pork with Preserved Vegetables Boiled Seasonal Vegetables Assorted Vegetarian Food Soup	Bean Curd Skins and Eggs Sweet Soup	Stewed Deep Fried Bean Curd Puffs with Fish Meat and Vermicelli Boiled Shanghai White Cabbages Seasonal Fruits
Thursday	Noodles in Soup with Preserved Mustard Greens and Shredded Pork	Steamed Chicken Claws in Black Bean Sauce Boiled Seasonal Vegetables Hairy Gourd, Dried Fish and Pig Bones Soup	Herbal Tea	Stewed Spare Ribs with Potatoes Boiled Seasonal Vegetables Seasonal Fruits
Friday	Congee with Peanuts and Black Eye Beans	Steamed Eggs with Minced Meat Boiled Chinese Flowering Cabbages White Fungi, Sweet Corn, Carrots and Pig Bones Soup	Tea Sliced Bread	Pork Chops in Tomato Sauce Boiled Seasonal Vegetables Seasonal Fruits

<i>Day</i>	<i>Breakfast</i>	<i>Lunch</i>	<i>Afternoon Tea</i>	<i>Dinner</i>
Saturday	Noodles in Soup with Shredded Meat and Crab Sticks	Minced Meat with Preserved Vegetables Boiled Spinach Tomatoes, Potatoes and Fish Soup	Sago and Coconut Milk Sweet Soup	Garoupa Slices in Fresh Tomato Sauce Boiled Seasonal Vegetables Seasonal Fruits
Sunday	Oatmeal with Eggs and Milk Sliced Bread with Condensed Milk and Peanut Butter	Steamed Soy Sauce Chicken Boiled Vegetables Chinese Herbs, Brown Dates and Pig Bones Soup	Tea Biscuits	Fried Zucchini with Black Fungi and Meat Slices Boiled Vegetables Seasonal Fruits

* The same soup will be served for lunch and dinner.

* Changes in the menu will be notified by the kitchen on the white board.

Tung Fong Rehabilitation Home Menu (Third week)

<i>Day</i>	<i>Breakfast</i>	<i>Lunch</i>	<i>Afternoon Tea</i>	<i>Dinner</i>
Monday	Congee with Minced Meat Plain Buns	Steamed Spare Ribs in Plum Sauce Boiled Vegetables Dried Cabbages, Carrots and Pig Bones Soup	Sago Sweet Soup	Steamed Seasonal Fish Boiled Seasonal Vegetables Seasonal Fruits
Tuesday	Noodles in Soup with Shredded Pork and Crab Sticks	Steamed Minced Pork with Salted Fish Boiled Spinach White Fungi, Carrots and Pig Bones Soup	Tea Sliced Bread	Braised Bean Curds Boiled Vegetables Seasonal Fruits
Wednesday	Congee with Preserved Root Mustard and Minced Meat Barbecued Pork Buns	Steamed Chicken with Black Fungi Boiled Chinese Flowering Cabbages Assorted Vegetarian Food Soup	Herbal Tea	Eggplants with Spicy Garlic Sauce Boiled Headed Lettuces Seasonal Fruits
Thursday	Macaroni with Ham and Shredded Meat	Steamed Chicken Claws in Black Bean Sauce Sauteed Shanghai White Cabbages Lotus Roots and Pig Bones Soup	Tea Biscuits	Stewed Bitter Cucumbers with Spare Ribs Sauteed Cucumbers Seasonal Fruits

<i>Day</i>	<i>Breakfast</i>	<i>Lunch</i>	<i>Afternoon Tea</i>	<i>Dinner</i>
Friday	Congee with Salty Pig Bones Buns with Meat and Vegetable Filling	Sauteed Fillets of Chicken with Onions and Bell Peppers Boiled Small Chinese White Cabbages Green Radishes and Carrots Soup	Tea Sliced Bread	Stewed Seasonal Melons with Minced Fish Boiled Chinese Flowering Cabbages Seasonal Fruits
Saturday	Noodles in Soup with Preserved Mustard Greens and Shredded Pork	Stewed Streaky Pork with Preserved Chinese Cabbages Boiled Headed Lettuces Black Moss, Peanuts and Black Eye Beans and Chicken Claws Soup	Papaya, White Fungi and Red Dates Sweet Soup	Garoupa Slices with Sweet Corn Boiled Seasonal Vegetables Seasonal Fruits
Sunday	Oatmeal with Eggs and Milk Barbecued Pork Buns	Plain Chicken Boiled Vegetables Chinese Herbs, Brown Dates and Pig Bones Soup	Tea Biscuits	Stewed Hairy Gourds with Bean Curd Puffs, Vermicelli and Minced Fish Boiled Vegetables Seasonal Fruits

* The same soup will be served for lunch and dinner.

* Changes in the menu will be notified by the kitchen on the white board.

Annex B

<i>Type of Staff</i>	<i>Supported Hostel for Semi-Independent Living</i>
Home manager	1 hostel manager
Ancillary worker	(a) 1 ancillary/care worker for every 30 residents or part thereof, between 7 am and 10 am and from 4 pm to 10 pm.
Ancillary worker	(b)* 1 ancillary/care worker for every 60 residents or part thereof, between 10 am and 4 pm. * not applicable if over 30 residents stay in the hostel throughout the day, in which case (a) will apply.
Care worker	(c) 1 ancillary/care worker for every 60 residents or part thereof, between 10 pm and 7 am.
Nurse	No nurse required.
Health worker	No health worker required.

Providing Sufficient Primary School Places for School-aged Children

11. **MR ABRAHAM SHEK:** *President, it has been reported that a baby boom is anticipated in the current Year of the Pig (that is, from mid-February 2007 to early February 2008), and it is expected that there will be a sharp rise in the number of children reaching the minimal age for studying at Primary One level in 2013. Given that more primary schools will continue to be closed down under the consolidation policy, will the Government inform this Council of the measures it will adopt to provide sufficient primary school places for school-aged children from 2013 onwards?*

SECRETARY FOR EDUCATION AND MANPOWER: President, according to the provisional birth figures so far available to the Government, there is no sign of a sharp rise in the number of babies born in the current Year of the Pig. The number of babies born in Hong Kong during February to April 2007 was about 14 000, slightly less than the figure of 14 164 for the same period last year. Excluding those babies who were born to mainland women and whose fathers are not Hong Kong permanent residents (their ultimate stay in/return to Hong Kong is therefore uncertain), the birth figure for February to April 2007 was about 10 400, around 600 babies less than that for the same period last year.

We wish to point out that we should not rely solely on the birth figure of a particular year to project the number of students in future years, such as using the birth figure for 2007 to project the number of Primary One students for the 2013-2014 school year. This is because population movements, including those of new arrivals from the Mainland and of babies born to mainland women in Hong Kong, during the intervening years would affect the size of the student population in future years. The Census and Statistics Department will release an updated set of population projections later this year, taking account of the latest trends of births, deaths and population movements. Taking into consideration this new set of population projections and the school sector's views and concerns, the Education and Manpower Bureau will review the arrangements for operation of Primary One classes in the coming years.

Poaching Activities by Illegal Entrants

12. **MS AUDREY EU** (in Chinese): *President, regarding poaching activities carried out by illegal entrants, will the Government inform this Council:*

- (a) *whether it has found, since last year, any illegal entrants trespassing on the Mai Po Nature Reserve to poach fish or migratory birds; if so, of the measures taken by the Government to tackle such activities;*
- (b) *whether the relevant government departments have sent staff to patrol the mudflats at the Mai Po Nature Reserve in view of the above activities; if so, of the details; and*
- (c) *of the number of cases in the past three years in which illegal entrants were prosecuted for poaching fish or migratory birds at the Mai Po Nature Reserve?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): President,

- (a) The Government has not found any illegal entrants trespassing on the Mai Po Nature Reserve to poach fish or migratory birds since last year. However, we have found fishermen crossing the boundary to fish at the mudflats in the Inner Deep Bay (the area near Mai Po Nature Reserve).

To protect the wetland habitats and birds, the Hong Kong Police Force (HKPF) and the Agriculture, Fisheries and Conservation Department (AFCD) have all along deployed staff to patrol the area and conducted joint operations to combat illegal cross-boundary fishing activities. When officers discover or receive complaints against fishermen crossing the boundary to cast fishing nets or collect shellfish illegally on the mudflats, they will take appropriate actions, including expelling or arresting the concerned fishermen and removing the fishing devices the fishermen have set up.

- (b) Besides deploying staff to patrol the boundary area (including the Mai Po Nature Reserve) on a daily basis, the HKPF has also installed security systems such as closed circuit televisions and thermal imagers throughout the boundary fence area to curb illegal entry. The waters of the mudflat areas are patrolled by the Marine Police. The AFCD also deploys staff to patrol the Mai Po Nature

Reserve on a daily basis and makes use of hovercrafts to patrol the Inner Deep Bay mudflats regularly.

- (c) In the past three years, no illegal entrants were prosecuted for poaching fish or migratory birds inside the Mai Po Nature Reserve. However, the HKPF arrested 37 fishermen who had illegally crossed the boundary for poaching fish or collecting marine products at the mudflats in the Inner Deep Bay during that period.

Safety of Major Infrastructure

13. **MR LEUNG YIU-CHUNG** (in Chinese): *President, the serious incident on the 11th of this month in which a cabin of the Ngong Ping 360 cable car system crashed to the ground has aroused my concern about the safety of other major infrastructures in Hong Kong, such as the road tunnels, major bridges and mass transit carriers. In this connection, will the Government inform this Council whether it has:*

- (a) *regularly inspected the safety of the abovementioned infrastructure; if it has, of the inspection standards adopted and the facilities inspected;*
- (b) *regularly updated the safety standards adopted for such infrastructure with the latest international standards; if it has, of the details; and*
- (c) *conducted, on a regular or irregular basis, risk assessment on such infrastructure, and formulated contingency measures in the light of the assessment results; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): *President, the Government has all along attached great attention to the safety of transport infrastructure such as road tunnels, major bridges, as well as mass transit carriers. Apart from regular inspections and maintenance, the concerned departments have from time to time updated the inspection and maintenance standards. Relevant details are as follows:*

Major Bridges

The regular inspections and maintenance of major bridges can mainly be categorized into the following three types:

(1) Six-monthly inspection

The inspection mainly adopts the visual method to check the conditions of the bridge deck facilities, main structures and ancillary structures so as to ascertain whether there is any damage that will cause safety problems.

(2) Biennial inspection

In addition to visual inspection in a short distance, the biennial inspection includes some non-destructive tests, for example, tests on concrete carbonation, chloride content and the adequacy of reinforcement cover so as to assess the service conditions of the bridges, compile the basic data required for the management and maintenance plans, as well as conduct comprehensive inspection on the conditions of both the main and ancillary structures.

(3) Special inspection

Government departments will conduct special inspections on the bridges in the wake of traffic accidents and natural disasters (such as earthquakes and typhoons) to assess their load bearing capacities and health conditions.

As far as bridge inspection is concerned, the international development trend is to install bridge structural health monitoring systems on long span bridges. The system, which comprises various types of sensors, including anemometer, temperature sensor, accelerometer, strain gauge, displacement transducer, and so on, provides real-time data on loads (such as wind, temperature, seismic and traffic) and structural reactions (such as displacement and stress) of the bridges to facilitate their structural health assessments. The concerned departments have installed/will install the system for all the existing long span bridges and those under construction. They will also continue to upgrade the functions of the system, for example, to upgrade the outdated level gauge with global positioning system to monitor any deformation of the bridges.

In addition, the concerned departments have actively participated in international bridge conferences to ensure that our techniques in bridge inspection and maintenance can be maintained on par with the international standards, and be further updated and upgraded.

The inspections of major bridges have been jointly undertaken by government engineers and the contractors. During inspection, they carry out analyses and assessments on the conditions of the bridges in order to formulate appropriate maintenance strategies and initiatives to avoid structural problems and the associated risks.

Major Tunnels

Major tunnels in Hong Kong fall into two categories, namely government tunnels and "Build-Operate-Transfer" (BOT) tunnels. For government tunnels, a number of government departments and the tunnel operators jointly carry out the regular inspection and maintenance works. The concerned departments regularly inspect the tunnel units under their purview according to the relevant guidelines and draw up specific inspection requirements for different units according to their maintenance needs.

As for BOT tunnels, the tunnel franchisees are responsible for the inspection and maintenance works, while related government departments monitor their performance in accordance with relevant legislations.

Moreover, all the concerned departments meet regularly over the year to review the inspection and maintenance work under their purview, as well as formulate and revise the related standards and guidelines in the light of international standards.

The related government departments and tunnel franchisees will also assess the possible risks associated with the tunnels, including facilities failure, serious traffic accidents, fire, flooding, and so on, and develop contingency measures against such risks.

Mass Transit Carriers

On mass transit carriers, both the Kowloon-Canton Railway Corporation and the MTR Corporation Limited have developed maintenance regimes with reference to suppliers' maintenance guidelines to maintain the safety and

reliability of the railway systems. Inspection and maintenance schedules have been drawn up for every unit or component in the railway systems, including the rolling stock, permanent way, overhead lines, signalling systems, communication systems, station facilities, and so on. All the equipment is replaced before ageing or wearing out as far as possible so as to achieve the best performance in terms of safety, reliability, service delivery, durability and productivity. For example, each train is scheduled for an overhaul once every three to four years, in which components of an assembly or equipment in a train system will be inspected, replaced or renewed to maintain the function of the equipment and integrity of the system.

Apart from drawing reference from the suppliers' maintenance guidelines, the two railway corporations have set up ISO certified quality management systems to ensure that the safety and reliability of railway services are maintained at a high standard. Based on the industry's best practice, the corporations also review and improve their maintenance and inspection regimes regularly to enhance the reliability and safety of the railway systems.

Both railway corporations adopt safety management systems in considering the safety issues in the design and construction of railways. Risk assessments are carried out systematically to minimize risks identified as far as reasonably practicable. At the stage of railway operation, the corporations take a proactive and systematic approach in managing the safety of their assets, systems, people and the environment through regular quality and risk reviews.

In addition, the two railway corporations from time to time review the lessons learnt in railway accidents and incidents happened in overseas railways with a view to controlling and reducing similar risks in local railway systems. Both corporations also engage independent experts to review their safety management systems at least once every three years.

Medical Services in North Lantau

14. **MR LEE WING-TAT** (in Chinese): *President, regarding medical services in North Lantau, will the Government inform this Council:*

- (a) *given that in its reply to a Member's question at the Council meeting on 23 November 2005, the Government indicated that North Lantau*

Hospital (NLH) would be commissioned in phases in 2011-2012 the earliest, of the latest progress of and the timetable for the construction and planning of NLH, and whether the hospital will be commissioned in phases in 2011-2012 as scheduled;

- (b) of the number of patient-trips taken by ambulances from Tung Chung to the accident and emergency departments of public hospitals in other districts in the past five years, broken down by triage categories;*
- (c) of the additional manpower and annual funding which will be required for the provision of round-the-clock non-urgent medical services at the Tung Chung Health Centre (TCHC) seven days a week; and whether the Government will consider extending the service hours of the TCHC before the commissioning of NLH; if so, of the relevant details and implementation timetable; if not, the reasons for that; and*
- (d) of the number of attendances in the past five years for dental services provided by the TCHC to civil servants and their dependents, and whether it will review the need for providing dental services at the TCHC to the public?*

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

- (a) A site of about 49 000 sq m at Tung Chung has been earmarked for construction of NLH. It normally takes four to five years to design, build and commission a new hospital. Subject to the relevant legal and administrative procedures, the Government and the Hospital Authority (HA) will expedite the planning and construction process of NLH. The planning of NLH is underway and we are now studying the scope of medical services and operational model of NLH. We will also explore the feasibility of public-private collaboration and commissioning the hospital by phases. We are now reviewing the schedule of developing NLH based on the above.

- (b) The number of Tung Chug residents being taken to public hospitals for medical treatment by ambulances in the past five years is at Annex 1.
- (c) The TCHC now opens six days a week to provide general out-patient service. Its consultation hours are similar to those of other general out-patient clinics (GOPCs) under the HA (that is, from 9 am to 5 pm and 6 pm to 10 pm on Mondays to Fridays, and from 9 am to 1 pm on Saturdays). According to the HA's preliminary assessment based on the existing delivery model of its out-patient service, the provision of round-the-clock out-patient service seven days a week at the TCHC would require deployment of 42 front-line health care and support staff and incur additional resources of about \$14 million per annum.

According to the HA's statistics, the current ratio between the attendances of the GOPC at the TCHC and the population of its catchment area is higher than the overall average of the whole territory. The ratio of major target client of the general out-patient services in Tung Chung (including the vulnerable groups such as low income families, the chronically ill and the disadvantaged elderly) is lower than the overall average of the whole territory.

There are already a number of clinics run by private medical practitioners in the Tung Chung District providing out-patient services which run until late at night. As GOPCs and their facilities are not meant to provide emergency services to patients in acute clinical conditions, patients with genuine urgent needs for medical attention should still seek services from the Accident and Emergency Departments of hospitals. The utilization rate of the GOPCs at late night or in overnight session is generally lower than that at daytime. Given the need to effectively deploy the resources for out-patient service, we have no plan to provide round-the-clock out-patient service seven days a week at Tung Chung at this stage.

Nevertheless, having regard to the fact that residents of Tung Chung may have greater demand for evening out-patient service due to

special factors of the district, and in order to make an in-depth assessment of the utilization of the evening out-patient service by local residents in Tung Chung and the cost-effectiveness of the service, the HA plans to reintroduce from this summer the "special evening out-patient service" for six months from 10.00 pm to 11.45 pm on Mondays to Fridays on a trial basis. Under the scheme, service will be provided to local residents with acute illness and need immediate treatment. The HA will conduct a review after the trial period to determine if the service should be continued.

- (d) The number of attendances of the Government Dental Clinic at the TCHC in the past five years is set out in Annex 2. As the average utilization rate of the clinic is over 97%, and the default rate of patients with bookings is relatively low, the Government does not have any plan to open part of the clinic's dental services to the public for the time being.

Annex 1

Total Number of Tung Chug residents being taken to
public hospitals for medical treatment by Ambulances over the Past Five Years

<i>Triage Category</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>
Category 1 (Critical)	26	32	35	55	49
Category 2 (Emergency)	37	51	58	84	126
Category 3 (Urgent)	878	889	1 237	1 909	2 270
Category 4 (Semi-urgent)	658	711	953	1 423	1 386
Category 5 (Non-urgent)	6	4	12	14	10
Unclassified	3	3	9	10	10
Total	1 608	1 690	2 304	3 495	3 851

Number of Attendances at Tung Chung Government Dental Clinic
in the Past Five Years

<i>Year</i>	<i>Number of Attendances</i>
2002	4 904
2003	5 050
2004	6 760
2005	7 917
2006	8 051

Mechanism for Monitoring Drug-resistant Bacteria

15. **MR FRED LI** (in Chinese): *President, it has been reported that a study conducted by the Department of Microbiology of the University of Hong Kong (HKU) in the local community in 2004 found that, among the women suffering from urinary tract infections caused by Escherichia coli (E. coli) in the community, the bacteria in 7% of them were drug resistant. According to the findings of a study conducted jointly by the above department and the Food and Environmental Hygiene Department (FEHD) in 2002, E. coli found in some food animals exhibited very strong drug resistance. Since the genetic sequencing of the E. coli found in the above two studies is exactly the same, it is likely that such bacteria have infected human beings through the food chain. In this connection, will the Government inform this Council:*

- (a) *of the details of the above study conducted by the FEHD and the HKU in 2002, and whether the FEHD had taken any follow-up actions upon the completion of the study; if so, of the details; if not, the reasons for that;*
- (b) *whether it knows that certain countries (for example, the United States) have set up mechanisms for monitoring the problem of food animals carrying drug-resistant bacteria, and of the details of the mechanisms concerned; and*
- (c) *whether it will consider setting up a similar monitoring mechanism in Hong Kong; if it will, of the details; if not, the reasons for that?*

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

- (a) In the study on "Escherichia coli Producing CTX-M β -Lactamases in Food Animals in Hong Kong" undertaken by the HKU in 2002, the FEHD was mainly responsible for helping to collect samples from cattle and pigs at the slaughterhouse for the study. The Department was not involved in any testing or analytical work.

The focus of the study rarely features in other studies in this field. The study also noted that the possibility of antimicrobial resistant bacteria being spread along the food chain remained unclear. When further studies or more reliable findings are available, the FEHD will take follow-up actions. At present, the FEHD has already put in place a regular surveillance mechanism to monitor veterinary drug residues in food animals at local slaughterhouses, in order to monitor whether the farms are using veterinary drugs properly and to prevent abuse of antibiotics.

- (b) From information available in the public domain, we note that some countries including the United States, Canada and Australia, have set up surveillance programmes on antimicrobial resistance. For details, please go to the following websites of the relevant agencies:

United States

(< http://www.fda.gov/cvm/narms_pg.html >)

Canada

(< <http://www.phac-aspc.gc.ca/cipars-picra/index.html> >)

Australia

(< <http://www.daff.gov.au/agriculture-food/food/regulation-safety/antimicrobial-resistance> >)

- (c) To monitor the presence of antimicrobial resistant bacteria in local food animals, the Agriculture, Fisheries and Conservation Department (AFCD) conducts regular inspections at livestock farms to check their hygiene and health conditions. Upon discovery of any unusual animal deaths, the AFCD staff will send the sick animals to veterinary laboratory for tests, pathogen isolation and

antibiotic sensitivity tests on the bacteria identified, including *E. coli*. So far, the AFCD has not found any animal disease caused by *E. coli* that cannot be treated by antibiotics. Therefore, we do not have any plan to set up new surveillance mechanism on top of the present arrangements.

Emergency Medicine Wards at Public Hospitals

16. **MR LI KWOK-YING** (in Chinese): *President, regarding the Emergency Medicine Wards (EMWs) set up by Queen Elizabeth Hospital (QEH), Tuen Mun Hospital (TMH) and Pamela Youde Nethersole Eastern Hospital (PYNEH) of the Hospital Authority (HA), will the Government inform this Council whether it knows:*

- (a) the current average occupancy rates of the EMWs at the hospitals concerned, and whether there are plans to increase the number of these beds; if so, the implementation timetable; if not, the reasons for that;*
- (b) whether the hospitals concerned have increased the number of health care staff for setting up these wards; if so, the respective number of additional staff for each of these hospitals; if not, the reasons for that;*
- (c) the current average waiting time for the patients at the Accident and Emergency Departments (AEDs) of the aforesaid hospitals, and how it compares with that prior to the setting up of the EMWs; and*
- (d) the training and guidelines provided by the hospitals concerned for the health care staff working in these wards?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): President, EMWs are a new type of wards established by the HA. The services provided in this type of wards are in-patient services by nature, with the objective of providing health care to urgent patients confirmed to be in need of hospitalization through an integrated and multi-disciplinary treatment approach. The EMWs are under the charge of specialists in emergency medicine, who employ a more proactive "treatment and review" approach. In addition to

conducting rapid examination and tests, the doctors in EMWs will, where necessary, administer emergency treatment and devise longer-term treatment plan for the patients. Generally speaking, a determination will be made within 24 hours as to whether the patients can be discharged or need to remain hospitalized. Patients confirmed to have a genuine need for continued hospitalization will generally be transferred to the appropriate specialist wards. EMWs were first set up in QEH and TMH in January 2007 while that in PYNEH was set up in May 2007. The HA has plans to set up such wards in all of its acute hospitals in the coming one to two years.

- (a) The current bed occupancy rates of the EMWs under the HA are as follows:

QEH (between 1 February and 31 May 2007)	109.7%
TMH (between 1 February and 31 May 2007)	104.8%
PYNEH (between 10 May and 31 May 2007)	100.2%

As EMWs are still in their initial stage of operation, it is necessary for the hospitals concerned to observe for a longer time before they can fully ascertain the actual demand for such service. Hence, the HA has no plan to increase the number of EMW beds for the time being.

- (b) QEH, TMH and PYNEH have deployed the requisite number of health care staff for setting up the EMWs, details of which are tabulated below:

QEH	Deployment of additional staff, namely, five nurses, five health care assistants, three general service assistants (clinical care) and one general service assistant (clerical), for setting up the EMW.
TMH	The EMW was converted from an existing general ward. No additional manpower is required.
PYNEH	Deployment of additional staff, namely, one associate consultant, four nurses, two health care assistants and two ward clerks, for setting up the EMW.

- (c) The primary function of AEDs is to provide emergency treatment to patients who fall ill or suffer from injuries. Health care staff at AEDs will triage and prioritize the patients for treatment according to their clinical conditions or seriousness of their injuries. In the case of EMWs, they are in-patient services by nature, and their service targets are patients in acute condition who are in need of in-patient care as determined by the health care staff at the AEDs. As AEDs and EMWs are different in their functions and the operation of EMWs does not have a bearing on the triage procedures at AEDs, there is no direct correlation between the setting up of EMWs and the waiting time at AEDs.

The average waiting time for the patients at AEDs of QEH and TMH between February and May in 2006 as compared to that during the corresponding period in 2007 is set out in the table below:

		<i>February to May 2006</i>						<i>February to May 2007</i>								
		<i>Average Waiting Time (Minute(s))</i>						<i>Average Waiting Time (Minute(s))</i>								
		Category 1: Critical	Category 2: Emergency	Category 3: Urgent	Category 4: Semi-urgent	Category 5: Non-urgent	Unclassified	Overall Average Waiting	Category 1: Critical	Category 2: Emergency	Category 3: Urgent	Category 4: Semi-urgent	Category 5: Non-urgent	Unclassified	Overall Average Waiting	
QEH		0	6	18	61	96	54	43	QEH	0	6	17	57	85	54	40
TMH		0	4	31	87	86	69	70	TMH	0	5	15	107	106	65	78

As the EMW of PYNEH did not come into operation until 10 May 2007, no sufficient data are available for comparison.

- (d) The hospitals concerned have organized a series of training programmes for their health care staff working in EMWs to enable these front-line staff to have an understanding of the operation of the EMWs and the patient care approach at the wards. The training programmes include clinical management system, transfer of patients as well as catering arrangement and management system.

In addition, the hospitals concerned have also put in place relevant clinical guidelines in order to provide their health care staff with clear instructions on the operation of EMWs and the patient care approach in the wards.

Crackdown on Illegal Taxi Practice

17. **MISS CHOY SO-YUK** (in Chinese): *President, it has been reported that it is a very common practice among taxi drivers to carry, at the same time, a number of passengers who do not know each other and charge them individually (commonly known as "taxi pooling"), and that such taxi drivers have serious speeding problems, recklessly endangering the lives of passengers and other road users. In this connection, will the Government inform this Council:*

- (a) of the respective numbers of taxi drivers prosecuted (together with a breakdown by districts) and convicted, in each of the past 24 months, for engaging in the abovementioned practice, and the penalty generally imposed on them by the Court;*
- (b) of the number of speeding cases and traffic accidents involving taxis engaged in taxi pooling over the past 24 months; and*
- (c) whether it will step up enforcement actions to curb such a practice?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): *President, regulation 37(e) of the Road Traffic (Public Services Vehicles) Regulations (Cap. 374D) stipulates that the driver of a taxi shall not permit any person other than the hirer without reasonable excuse to enter the taxi without the consent of the hirer when his taxi is hired. Upon conviction, the offender is liable to a fine of \$5,000 and to imprisonment for six months.*

- (a) Since the police do not have a monthly breakdown of the number of prosecutions against taxi drivers in breach of the above Regulation by districts, we can only report that there were a total of 214 related prosecutions over the past 24 months. All of the prosecutions were successful and fines ranging from \$500 to \$1,100 were imposed.*

- (b) The police do not have the breakdown of the numbers of speeding cases and traffic accidents involving the above practice of operating taxi service. The numbers of prosecutions against taxis involved in speeding and traffic accidents for the past 24 months stand at 52 426 and 6 673 respectively.
- (c) Over 400 enforcement operations were conducted by the police to combat all types of illegal behaviour involving vehicles for the past 24 months. The police will continue to take appropriate measures and enforcement actions to ensure the lawful operation of public vehicles and safety of passengers.

New Central Harbourfront Urban Design Study

18. **DR KWOK KA-KI** (in Chinese): *President, the Planning Department (PlanD) is now conducting the New Central Harbourfront Urban Design Study, which includes public engagement. In this connection, will the Government inform this Council:*

- (a) *of the estimated expenditure of stage one public engagement;*
- (b) *of the number of publicity materials printed for this study and the distribution channels;*
- (c) *whether it has publicized this study by placing advertisements on newspapers and magazines, broadcasting Announcements of Public Interest in the electronic media, displaying advertisements on illuminated advertisement boxes and putting up posters; if it has, of the details of the promotion efforts, such as the relevant dates and names of the publications, as well as the locations of the illuminated advertisement boxes and posters;*
- (d) *given that stage one public engagement included the focus group workshop and community engagement held in the first half of May, of the means by which the Administration invited public participation in these two activities, the respective numbers of members of the public, public officers and staff of the consultancy firm participating in the activities and how the views expressed by*

*public officers and staff of the consultancy firm will be dealt with;
and*

- (e) *whether it will hold a roving exhibition for this study to solicit public views; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):
President, the new Central Harbourfront is covered by the approved Central District (Extension) and Central District Outline Zoning Plans (OZPs). Having considered several rezoning applications, the Town Planning Board (TPB) affirmed the land use planning of the approved OZPs, and initiated to refine the existing urban design framework of the new Central Harbourfront which would guide the detailed design. In response to the request of the TPB, the PlanD commissioned a consultant to undertake the Urban Design Study for the New Central Harbourfront in late March 2007.

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

- (a) The consultancy fee for the entire public engagement programme for the Urban Design Study for the New Central Harbourfront is \$1.1 million. The programme will be carried out in stages.
- (b) Regarding the first stage of public engagement for the Urban Design Study for the New Central Harbourfront, the PlanD has printed a total of about 50 000 copies of a pamphlet in English and Chinese. These are made available to the public at various district offices, the City Hall Library, the Central Library, the Hong Kong Planning and Infrastructure Exhibition Gallery, the Planning Enquiry Counters of the PlanD, roving exhibition venue, and so on. Copies of the pamphlet were also distributed to the relevant District Councils, professional bodies, interested organizations as well as the participants of the focus group workshop and the community engagement forum mentioned in part (d) below.
- (c) To publicize the first stage of public engagement activities, the PlanD held a press briefing and issued a press release on 3 May. A dedicated webpage was set up as well. To publicize the focus group workshop and the community engagement forum mentioned

in part (d) below, the PlanD printed posters which were put up before the events in the vicinity of the venues concerned. Advertisements were placed in the *Ming Pao Daily News*, the *Oriental Daily News* and the *South China Morning Post* on 8 and 9 May consecutively to invite public participation.

- (d) A focus group workshop, mainly for the participation of professional and academic institutions, was held on 5 May. Apart from the promotion efforts mentioned in part (c) above, the PlanD had, by post and e-mail, invited 16 relevant professional and academic institutions to take part in the activity. A total of 66 members of the public, 11 representatives of government departments which took part in the Urban Design Study for the New Central Harbourfront and 13 staff members of the consultancy firm attended the workshop.

On 12 May, a community engagement forum was organized for the general public, the relevant advisory bodies and concerned groups. In addition to the publicity mentioned in part (c) above, the PlanD had, by post and e-mail, invited about 70 organizations (including the Legislative Council Panel on Planning, Lands and Works, the TPB, the Harbour-Front Enhancement Committee, the Antiquities Advisory Board, District Councils, professional and academic institutions and concerned parties) to take part in the forum. A total of 134 members of the public, four representatives of government departments which took part in the Study and 12 staff members of the consultancy firm attended the forum.

The representatives of government departments and staff members of the consultancy firm participated in the above two activities for the purpose of facilitating discussions, providing supplementary information and listening to views expressed by other participants.

- (e) Since early May, the PlanD has been conducting a roving exhibition at the Star Ferry Pier to display materials concerning the first stage of public engagement for the Urban Design Study for the New Central Harbourfront. A view-collection box has also been placed at the exhibition venue to canvass public views. The PlanD is working out detailed arrangements relating to further roving exhibitions.

Uploading Government Forms

19. **MR ALBERT CHAN** (in Chinese): *President, recently, many members of the public have complained to me that a number of government departments have not uploaded the forms provided by them onto their websites for downloading by the public, causing inconvenience to the public. In this connection, will the Government:*

- (a) *set out the names and reference numbers of the forms not yet available on the relevant websites, the reasons for not uploading such forms, and the anticipated dates when such forms will be made available on the relevant websites (if they will be uploaded), broken down by government departments; and*
- (b) *inform this Council whether it will adopt measures to encourage various government departments to expedite uploading all of their forms onto their websites for downloading by the public; if so, of the details; if not, the reasons for that?*

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

- (a) There are about 2 600 government forms, most of which are either downloadable or can be accessed via online services through the Internet. Only 79 of them are currently not yet available through the Internet.

The Government will continue to encourage the relevant departments to make available the remaining forms through the Internet where feasible. Among these 79 forms, 28 of them (listed in Annex A) will be made available in the Internet in the coming few months.

The remaining 51 forms (listed in Annex B) are mainly forms that are issued by departments to specific applicants/companies for operational reasons, mostly with pre-filled personal/company data; saleable forms that are not normally used by the general public (for example, saleable forms of the Trade and Industry Department for

use by traders); and forms for which the feasibility of providing downloadable options are under review/will be reviewed by the departments concerned.

- (b) To facilitate convenient access by the public, the Office of the Government Chief Information Officer will liaise with relevant bureaux and departments to understand any difficulties they perceive in putting their forms online, and provide necessary advice to them in examining the feasibility of making available such forms through the Internet in ways which are consistent with their business and operational requirements.

Annex A

Government forms to be provided with downloading options

<i>Department</i>	<i>Form Title</i>	<i>Form Number</i>	<i>Planned timetable for providing download option</i>
Companies Registry (CR)	Application for Registration of a Limited Partnership	1	July 2007
CR	Notice of Change in the Limited Partnership	2	July 2007
CR	Application by an Individual for a Licence for Himself or for a Partnership	2	July 2007
CR	Application by a Company for a Licence	3	July 2007
CR	Statement in Support of an Application by an Individual for a Licence for Himself or for a Partnership	4	July 2007
CR	Statement in Support of an Application by a Company for a Licence	5	July 2007
CR	Application by an Individual for Renewal of a Licence for Himself or for a Partnership	6	July 2007
CR	Application by a Company for Renewal of a Licence	7	July 2007

<i>Department</i>	<i>Form Title</i>	<i>Form Number</i>	<i>Planned timetable for providing download option</i>
CR	Statement in Support of an Application by an Individual for Renewal of a Licence for Himself or for a Partnership	8	July 2007
CR	Statement in Support of an Application by a Company for Renewal of a Licence	9	July 2007
CR	Application by a person to be Exempted from Specified Provisions of the Money Lenders	11	July 2007
Department of Health (DH)	Child Health Service — First Registration	FHS 11	September 2007
DH	Application for Replacement of Immunization Record	FHS 12	July 2007
DH	Application for Medical Report	FHS 19A and 19B	July 2007
DH	Application for Access to Personal Data	FHS 39A and 39B	July 2007
DH	Application Form for Practising Certificate	Not applicable	June 2007
DH	Change of Particulars of Accredited Institutions	Not applicable	June 2007
DH	Application Form for Certificate verifying Registration as Registered Chinese Medicine Practitioner or Certified Copy of an Entry in the Register of Chinese Medicine Practitioners	Not applicable	June 2007
DH	Application Form for Certified Copy of Notification to Listed Chinese Medicine Practitioner	Not applicable	June 2007
DH	Application Form for Certified Copy of Practising Certificate	Not applicable	June 2007
DH	Family Planning Service/Postnatal Service — First Registration	FHS 50	July 2007
DH	Antenatal Service — First Registration	FHS 51	July 2007

<i>Department</i>	<i>Form Title</i>	<i>Form Number</i>	<i>Planned timetable for providing download option</i>
DH	Notification of termination of a pregnancy	DH 1700(S) (Rev.96)	July 2007
Food and Environmental Hygiene Department (FEHD)	Application for Certificate of Cremation	FEHB 143	July 2007
FEHD	Application for Burial Application for Burial	FEHB 144	July 2007
FEHD	Application for Recovery of Cremated Ashes	FEHB 151	July 2007
Immigration Department (IMMD)	Statutory Declaration (<i>before a Commissioner for Oaths</i>)	ROP21(c)	August 2007
IMMD	Notification of Death and Return of Identity Card of Deceased Persons	ROP35a	August 2007

Remark: The text in italic is for reference only and not part of the Form Title.

Annex B

Government forms not yet accessible through the Internet

<i>Department</i>	<i>Form Title</i>	<i>Form Number</i>
Forms that have to be issued by departments to specific applicants/companies for operational reasons:		
Department of Health	Application Form for Renewal of Practising Certificate of Registered Chinese Medicine Practitioner	Not applicable
Inland Revenue Department (IRD)	Profits Tax Return — Corporations	BIR51
IRD	Profits Tax Return — Persons other than corporations	BIR52
IRD	Profits Tax Returns — Non-resident persons	BIR54
IRD	Property Tax Return — Corporations and Bodies of Persons	BIR58
Student Financial Assistance Agency (SFAA)	Application for Assessment of Eligibility (Form B)	SFAA106B

<i>Department</i>	<i>Form Title</i>	<i>Form Number</i>
SFAA	Financial Assistance Scheme for Post-secondary Students — Undertaking and Deed of Indemnity (<i>for undertaking</i>)	SFAA 153
SFAA	Financial Assistance Scheme for Post-secondary Students — Undertaking and Deed of Indemnity (<i>for 2005-2006 application</i>)	SFAA 158 (Rev. 2006)
SFAA	Financial Assistance Scheme for Post-secondary Students — Undertaking and Deed of Indemnity (<i>for Deed of Indemnity</i>)	SFAA 154
SFAA	Financial Assistance Scheme for Post-secondary Students — Indemnifier Details Input form	SFAA 155
SFAA	Financial Assistance Scheme for Post-secondary Students — Indemnifier Details Input form (<i>for 2005-2006 application</i>)	SFAA 159 (Rev. 2006)
SFAA	Financial Assistance Scheme for Post-secondary Students — Notice of Offer	SFAA 152 (Rev. 2006)
SFAA	Financial Assistance Scheme for Post-secondary Students — Non-acceptance of Grant/Loan offered	SFAA 156 (Rev. 2006)
Television and Entertainment Licensing Authority	Surrender of Special Effects Operator Licence	13
Saleable forms not normally used by the general public:		
Trade and Industry Department (TID)	Combined Form for Export and Import of Goods Under Outward Processing Arrangement (OPA)	TRA577
TID	Import Licence (Textiles)	TID23
TID	Export Licence (Textiles)	TID353
TID	Application Form for Form A	TIC 185B
TID	Import Licence Form 3	FORM-TID187
TID	Export Licence Form 6	FORM-TID394
TID	Kimberley Process Certificate (Import)	TID 503
TID	Kimberley Process Certificate (Export)	TID 504
TID	Import Licence (Ozone Depleting Substances)	Nil
TID	Export Licence (Ozone Depleting Substances)	Nil
TID	Import and Export Licence Form (Ozone Depleting Substances)	Nil
TID	Application for Transfer of Quota (Ozone Depleting Substances)	Nil

<i>Department</i>	<i>Form Title</i>	<i>Form Number</i>
Forms not yet downloadable through the Internet due to procedural requirement, minimal demand, feasibility under review/to be examined:		
Immigration Department (IMMD)	Statutory Declaration (<i>by either party concerning marriage according to Chinese customary rites and ceremonies/modern marriage ceremony</i>)	MR31
IMMD	Statutory Declaration (<i>by witness concerning marriage according to Chinese customary rites and ceremonies/modern marriage ceremony</i>)	MR32
IMMD	Statutory Declaration (<i>by both parties concerning marriage according to Chinese customary marriage</i>)	MR34
IMMD	Interpreter's Declaration	MR46
IMMD	Declaration of name of child	BDR6(s)
IMMD	Declaration for correction of error in register	BDR 11(s)
IMMD	Declaration for altering or adding to the name of a child	BDR47(s)
IMMD	Statutory Declaration (<i>by parent concerning details of marriage</i>)	BDR88
IMMD	Notice of Marriage	MR1(s)
IMMD	Application for Registration of Customary Marriage (by both parties) (form 1)	MR23(s)
IMMD	Application for Registration of Validated Marriage (by both parties) (form 2)	MR24(s)
IMMD	Application for Registration of Customary Marriage (by either party) (form 3)	MR25(s)
IMMD	Application for Registration of Validated Marriage (by either party) (form 4)	MR26(s)
IMMD	Statutory Declaration (<i>concerning Chinese modern marriage</i>)	MR38
IMMD	Statutory Declaration (<i>concerning single status</i>)	MR39
IMMD	Statutory Declaration (<i>concerning cohabitation</i>)	MR40
IMMD	Declaration form (<i>In accordance with section 21 of Marriage Ordinance (Cap. 181)</i>)	MR65
IMMD	Information required for registration of birth/re-registration of birth	BDR93
IMMD	Information required for entry of adoption order	BDR 94
Information Services Department	Order Form (for photographs)	Not applicable

<i>Department</i>	<i>Form Title</i>	<i>Form Number</i>
Labour Department (LD)	Labour Relations Division Claim Form	LD 15
LD	Form 1 — Application and Declaration for ex gratia payment from the Protection of Wages on Insolvency Fund	LD 391(b), LD 391(a)
LD	Application for Ex gratia Payment from the Protection of Wages on Insolvency Fund — Notes to Applicants and Checklist of Documents Required	LD 442(a)(e), LD 442(a)
Student Financial Assistance Agency (SFAA)	Financial Assistance Scheme for Post-secondary Students — Application Form G	FASP/GB (2006)
SFAA	Financial Assistance Scheme for Post-secondary Students — Application Form S	FASP/SB (2006)

Remark: The text in italic is for reference only and not part of the Form Title.

Updated Information Systems Strategy of Immigration Department

20. **MR SIN CHUNG-KAI** (in Chinese): *President, since 1999-2000, the Immigration Department (ImmD) has been implementing by phases the Updated Information Systems Strategy which embodies 30 different but interrelated projects. In this connection, will the Government inform this Council:*

- (a) *whether any projects under the Strategy were/are aimed at reducing the workload of the front-line staff and coping with the increasing cross-boundary passenger traffic; if so, of the details; if not, the reasons for that;*
- (b) *of the implementation progress of the Strategy, including whether the projects have been completed or delayed and the reasons for the delay (if any);*
- (c) *whether it has conducted an interim review of the Strategy to examine, among other things, whether the completed projects have achieved their aims; if it has, of the criteria adopted for and results of such a review; if not, the reasons for that; and*

- (d) *as staff unions of the ImmD have relayed to the Panel on Security of this Council that the workload of the front-line staff was very heavy, whether it has updated the Strategy to address this situation; if it has, of the relevant details and schedule; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) The purpose of implementing the Updated Information Systems Strategy by the ImmD is to further enhance the Department's operational efficiency and quality of services mainly through the application and development of advanced information technology (IT), in order to provide better services to the public. Of the 30 projects, the following ones aim at reducing the workload of front-line staff and alleviating the impacts brought about by the ever-increasing passenger traffic:
1. Electronic Visit Permit Application System
 - applications for visit permits by Taiwan visitors and the issue of such permits are processed through electronic means
 2. Smart Identity Card System
 - introduction of digital photographing and fingerprint-taking systems and streamlining of working procedures
 3. Control Point System
 - introduction of the new document imaging optical character recognition reader, personal digital assistant, and so on, to enhance the Department's ability to input passenger information
 4. Electronic Service Delivery (ESD) Support
 - the project offers a wider range of information and services to the public via the Government ESD infrastructure, for example, e-booking of appointment for giving of marriage notice

5. Automated Passenger Clearance and Automated Vehicle Clearance Systems [e-Channel]
- the e-Channel system enables passengers and drivers to enjoy a reliable automated passenger clearance process by leveraging on the smart identity card and biometrics verification technologies
- (b) The Updated Information Systems Strategy has made good progress. Please see Annex for details.
- (c) The ImmD regularly consults the users and reviews the performance indicators for and effectiveness of the Updated Information Systems Strategy to ascertain whether the projects have achieved the expected results. Through regular work progress reports and discussion, the Department follows up the projects thoroughly and examines the synergy generated by the programme as a whole, in order to seek further improvements.

Reviews indicate that the targets of completed projects have been met. For the five projects mentioned in part (a), they have achieved the following results:

1. providing one-stop services or e-submission and e-booking services with the use of IT;
 2. improving service standards;
 3. effectively reducing conflicts between front-line staff and the public as a result of unnecessary waiting or services not being available as quotas have been taken up; and
 4. providing better support and working environment for front-line staff.
- (d) The ImmD reviews its information systems strategy from time to time to further enhance its operational efficiency, improve the procedures for providing various public services and assist front-line staff with their routine work. The Department will improve the functions of its existing IT systems and explore new technologies with a view to further alleviating the pressure on front-line staff

through utilization of IT. For example, the ImmD is considering the installation of more advanced fingerprint scanners to improve the performance of e-Channels. It also plans to study the feasibility of implementing fast-track e-Channels and to extend e-Channels services to frequent visitors to Hong Kong. Following the completion of all the projects next year, the ImmD will review and decide on the future of its information systems strategy in order to meet various service and operational needs. In formulating the strategy, the ImmD will take into consideration views of the public and staff on the existing information systems. It will continue to make use of technology to enhance the Department's operational efficiency and quality of services, with a view to providing better services to the public.

Annex

Progress of the Updated Information Systems Strategy

The following projects have been implemented as scheduled:

- Smart Identity Card System
- Business Process Re-engineering
- Electronic Visit Permit Application System and Advance Passenger Processing System (Pilot)
- Infrastructure Upgrade Programme (including four projects)
- Immigration Control Automation System Enhancement Programme (that is, Control Point System) (including two projects)
- Information Systems (IS) Branch Organization Restructuring
- Automated Passenger Clearance System and Automated Vehicle Clearance System (including two projects)
- Capability Improvement Programme (including three projects)
- Change Management

- Communication
- Intranet Implementation
- ESD Support
- Business Information
- Chinese Language Support
- Personnel Support
- Additional Long Range Strategic Studies

The following projects are in progress:

- Application and Investigation Easy System (APPLIES) (formerly known as Processing Automation System Enhancement Programme) (including two projects)

The project consists of 10 separate but interrelated sub-systems to support the operation of more than 10 business areas. Due to its extensive scope and complexity, the design and development of the initial phase of the system took a longer time so as to ensure stable operation of the system when it rolls out. The first phase of the Control and Support Sub-system was implemented in January 2007, about six months behind schedule (mid-2006). The project will be completed in 2008. The ImmD will continue to monitor closely the implementation of the project and have stepped up efforts to avoid unnecessary delay.

- Electronic Records Programme (ERP) (including four projects)

File conversion work is under way. The programme, which has to tie in with the schedule for APPLIES in order to achieve the anticipated synergy, will be completed in 2008.

- Data Warehousing (Management Information System)

The system is being implemented by phases in a building block approach. It is expected to complete in 2008.

BILLS**First Reading of Bills**

PRESIDENT (in Cantonese): Bills: First Reading.

ATTACHMENT OF INCOME ORDER (APPLICATION TO GOVERNMENT AND MISCELLANEOUS AMENDMENTS) BILL 2007**MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2007****DOMESTIC VIOLENCE (AMENDMENT) BILL 2007**

CLERK (in Cantonese): Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007
Mandatory Provident Fund Schemes (Amendment) Bill 2007
Domestic Violence (Amendment) Bill 2007.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

ATTACHMENT OF INCOME ORDER (APPLICATION TO GOVERNMENT AND MISCELLANEOUS AMENDMENTS) BILL 2007

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I move the Second Reading of the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007 (the Bill).

In the year 1997, the Government made the Attachment to Income Order (AIO) to empower the Court to make an AIO, requiring the income source of a

maintenance payer, for instance, an employer, to deduct a specified amount from the income of a maintenance payer and pay the deduction direct to a maintenance payee. The objective of the Bill is to enable a maintenance payee to receive punctual maintenance payments specified in the maintenance order.

The policy intent of the AIO legislation is to allow the income source of a maintenance payer, irrespective of whether it is the Government or not, to make deductions from the payer's income according to an AIO for paying the whole or part of the maintenance payment the payer should undertake. However, the existing AIO legislation contains no express provision stating that it applies to the Government as an income source. On the other hand, proviso (a) to section 23(1) of the Crown Proceedings Ordinance (CPO) (Cap. 300) stipulates unequivocally the prohibition of the attachment of wages or salary paid by the Government. In the past, the relevant provisions of the AIO legislation had been subject to different interpretations by judges in the Family Court. Some judges had refused AIO applications against wages paid by the Government on grounds of the prohibition of the attachment of wages of government officers under the CPO, while some have granted AIOs against wages of government employees. The Government has complied with AIOs issued by the Court against it as an income source.

Last December, in an appeal case on maintenance payment, the Court of Appeal handed down a judgement which gave a clear ruling that no attachment order could be made in respect of any wages or salary paid by the Government in view of the proviso to Section 23(1) of the CPO. As the ruling of the Court of Appeal has binding effect, the Family Court could no longer issue any AIO against the wages paid by the Government. Hence, there is an urgent need to amend the existing AIO legislation to ensure the legislation applies to the Government as an income source.

The Bill seeks to amend the existing AIO legislation to stipulate explicitly that notwithstanding proviso (a) to section 23(1) of the CPO, an AIO can be made by the Court against the wages or salary payable to a maintenance payer by the Government. Moreover, the Bill will validate all AIOs already made against wages or salary paid by the Government to ensure that past payments to maintenance payees would be free from any possible challenge.

We have consulted major stakeholders affected by the amendment proposal, including civil servants, staff employed by the Government on

non-civil service terms, judges, judicial officers, officers of the Independent Commission Against Corruption and staff of the Hong Kong Monetary Authority, through the relevant channels. They have not raised any objection to the amendment proposal. We also consulted the Panel on Home Affairs of the Legislative Council on 13 April 2007 and the Panel supports the amendment proposal.

The Bill seeks to implement the policy intent of AIOs. This amendment proposal will not create new obligations for maintenance payers subject to maintenance orders, who are obliged to pay the maintenance payees.

I hope Members will support the Bill and pass it as soon as possible to safeguard the interest of maintenance payees.

Thank you, Honourable Members and Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Attachment of Income Order (Application to Government and Miscellaneous Amendments) Bill 2007 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.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2007

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I move the Second Reading of the Mandatory Provident Fund Schemes (Amendment) Bill 2007 (the Bill).

The Bill seeks to perfect the Mandatory Provident Fund (MPF) System by proposing various amendments to the legislation to further enhance the efficiency and cost-effectiveness of the operation of the system. The relevant amendments were proposed by the Mandatory Provident Fund Schemes Authority (MPFA) in the light of its operational experience, and views of the Mandatory Provident Fund Schemes Operation Review Committee (the Review Committee) and the Mandatory Provident Fund Schemes Advisory Committee have been sought by the MPFA. Members of the two Committees include representatives of

employers and employees and people from the relevant sectors. We had briefed the Panel on Financial Affairs of the Legislative Council on 12 April 2007 and the Panel in general welcomed the relevant amendments proposed by the Government.

One of the major proposals of the Bill is to remove the arrangement of excluding housing allowance and benefits from the scope of definition of "relevant income". Under this amendment, housing allowance and housing benefits will be included in the computation of relevant income for mandatory contribution purpose.

According to complaints received by the MPFA in recent years, some unscrupulous employers had intentionally converted a portion of salary of their employees to what they claimed to be a housing allowance or housings benefits to evade their responsibility of making mandatory contributions or reduce the amount payable. Most of the complaints involved low-income employees, and their retirement protection is thus seriously affected. The proposed amendment in the Bill can effectively stamp out such improper conduct.

Another major proposal in the Bill is on the improvement of the mechanism for recovering MPF contribution in arrears. Concerns have been expressed that the current arrears recovery process is too cumbersome, thus affecting the ability of the MPFA to recover from employers default contribution in a timely manner, especially in cases where an employer enters into bankruptcy or liquidation. We thus propose to amend the legislation to streamline the procedure for recovering contribution in arrears and to clarify the uncertainty in the relevant legislation to provide better protection to the rights and benefits of employees.

Recently, the level of fees charged by MPF schemes has raised grave concern in society. We consider that by streamlining the administrative procedures of the MPF System, the operating cost of MPF schemes may be lowered, which is conducive to the lowering of fees charged by MPF schemes in the long run. In this connection, the MPFA will conduct joint reviews from time to time with the trade of the operation of the existing system and put forth amendment proposals. A number of proposals which may enhance the administrative efficiency of MPF have been incorporated into the Bill, including a clear provision on the legal effect of the consent given by the MPFA to trustees on restructuring application of MPF schemes; the permission for trustees to send membership certificates or participation certificates by ordinary post, in addition

to registered post; the exemption of constituent funds of MPF schemes investing only in a single pooled investment fund or a single index-tracking collective investment scheme from appointing investment managers, and streamlined procedures for dealing with unclaimed benefits.

The MPFA always endeavours to enhance the transparency of fees charged by MPF schemes and educate scheme members of the important bearing of fees charged in the making of investment decisions, bringing market force into full play in the setting of fees. The MPFA will launch a comparative platform interface on the Internet on July 2007, which is next month, to provide scheme members with information on the highest, average and lowest fees charged by various types of fund. The Bill proposes the further disclosure of information on fees charged by the relevant funds. Upon the passage of the proposal, the MPFA will be able to launch Phase II of the comparative platform, providing detailed information on the fees of each individual fund, which will facilitate scheme members in grasping the relevant information in making investment decisions.

Other legislative proposals in the Bill seek to step up law enforcement under the MPF System and improve the administration and regulation of MPF schemes.

Madam President, the Bill is conducive to the perfection of the MPF System. Moreover, the existing 2 million-odd MPF scheme members, more than 200 000 employers and the trade will also benefit. I hope Members will support the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) Bill 2007 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.

DOMESTIC VIOLENCE (AMENDMENT) BILL 2007

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that the Domestic Violence (Amendment) Bill 2007 (the Bill) be read the Second time.

According to the existing Domestic Violence Ordinance (the Ordinance), a party to a marriage, or a man and a woman in cohabitation, may apply to the Court for an injunction order to restrain the other party from molesting him or her, or any child living with him or her.

I propose to amend the Ordinance to enhance protection for victims of domestic violence. Proposed amendments involving the substantive policy can be categorized into four main areas.

First, I propose to greatly extend the scope of the Ordinance to include the following familial relationships:

- the victim and his/her former husbands, former wives or former partners in cohabitation relationships between persons of opposite sex;
- the victim, his/her other immediate family members (including the parents and grandparents of the victim or his/her spouse, and their children and grandchildren) and their spouses; and
- the victim, his/her other extended family members (including the brothers, sisters, uncles, aunts, nephews, nieces and cousins of the victim or his/her spouse) and their spouses.

The scope of the Ordinance, as amended, is pretty comprehensive, with the inclusion of immediate and extended familial relationships. After the new ordinance comes into operation, all the protected persons, whether or not they live with the abusers, will be protected.

Second, the Bill further enhances the protection for minors under the age of 18. Under the existing Ordinance, a minor can only apply for an injunction order by either parent whom he/she lives with so as to restrain either parent from molesting him or her. Through this Bill, we propose that minors who suffer from domestic violence can apply to the Court for an injunction order by "next friend" in future, with a view to preventing him/her from being molested by either of his or her parents or other specified relatives. Furthermore, whether or not the minor concerned is living with the abuser, he or she will be protected.

The Bill also proposes that the Court may vary or suspend a custody or access order in respect of the minor concerned when the Court makes injunctions to exclude the abuser from certain places. This provides greater protection for the abused minors.

The third major amendment aims to enhance protection for all domestic violence victims. The Bill proposes that if the Court reasonably believes in future that the abuser will likely cause bodily harm to the applicant or the child concerned, it may attach an authorization of arrest to an injunction order. At present, the Court can attach an authorization of arrest only if the abuser has caused actual bodily harm to the applicant or the minor concerned.

Furthermore, according to the existing Ordinance, the validity of an injunction order granted by the Court or an attached authorization of arrest cannot exceed three months for the first instance, and they may be extended by the Court only once, for a maximum of another three months only. The Bill will remove these restrictions to enable the Court to extend the validity period of an injunction order or authorization of arrest for unlimited times as necessary in future, whereby the maximum duration will be extended from the present six months to two years, having regard to the time generally required of related matrimonial or custody proceedings.

Fourth, in order to facilitate rehabilitation of the abusers which will be conducive to the better prevention of recurrence of domestic violence, we have drawn on overseas experience and proposed that the Court may, in granting a "non-molestation order" in future, require the abuser to attend an anti-violence programme as approved by the Director of Social Welfare. The proposed programme is educational in nature and applicable to different types of abusers. It aims at changing the attitude and behaviour of the abusers that lead to the granting of the injunction order, and will include general topics such as "emotional control", "dealing with matrimonial/familial relationship" and "parenting practices".

Madam President, the above proposed amendments were made after a comprehensive review by the Government and extensive consultation with the Legislative Council Panel on Welfare, various consultative committees and organizations concerned, having regard to their views. It is believed that they can significantly enhance the protection for victims of domestic violence.

Next, I wish to state the Government's position on two related issues.

The first issue relates to the definition of "molest". Under the Ordinance, the Court may grant an injunction order if it is satisfied that the abuser has "molested" the victim. However, the term "molest" is not defined in the Ordinance. Some organizations think that the term "molest" or "violence" should be defined in the Ordinance to confirm that it applies to different forms of domestic violence, such as physical, psychological or sexual abuse.

In this connection, I wish to stress that it has been the established policy of the Government to combat different forms of domestic violence, including physical, psychological or sexual abuses, and this policy has been fully reflected and implemented in the Ordinance. Although there is no definition of "molest" in the Ordinance, previous judgements passed by Hong Kong Courts have clearly established that the wide concept of "molest", extending abuse beyond the more typical instances of physical assault to include any form of physical, sexual or psychological molestation or harassment which had a serious detrimental effect on the health and well-being of the victim. The concept also covered the threat of any form of such molestation or harassment. In fact, information gathered from the Judiciary revealed that the Court had granted injunction under the Ordinance on the grounds of the three different forms of abuse and stalking behaviour causing mental disturbances to the victim. It is therefore evident from these precedents that, apart from physical and sexual abuses, the Ordinance also applies to psychological abuse and stalking.

Furthermore, the Ordinance was modelled on relevant legislation of the United Kingdom. In the United Kingdom, the term "molest" is not defined in the relevant legislation either. But, again, precedents of British Courts also confirmed that the term "molest" could be extended to other forms of abuse, such as psychological abuse and stalking. In fact, in considering an amendment to the relevant legislation in the past, the United Kingdom had carefully studied the need to define the term "molest" in it. But the findings concluded that "molest" had a wide definition and there were abundant court cases to provide better protection for victims. On the contrary, not only was it extremely difficult to specifically define "molest" or "psychological abuse" in the law and exhaust the list of the behaviour concerned, but it might even narrow the scope of the Ordinance. Worse still, the introduction of a new definition may render the numerous previous court cases already built up involving the definition of

"molest" irrelevant. This will instead undermine the protection for victims. Therefore, the United Kingdom upheld the practice of not defining the term "molest" in the legislation.

Madam President, previous court cases have clearly demonstrated that the existing Ordinance applies to physical, psychological and sexual abuses. In the context of protecting the victims of domestic violence by all means, we consider that we should maintain the *status quo* and not to define the term "molest" in the Ordinance. Meanwhile, however, the Government will continue to explore different channels, other than legislation, such as through discussions in the Legislative Council, public education and publicity activities, production of information kit for domestic violence victims and front-line professionals, provision of training courses to front-line professionals, and so on, so as to enable the victims, abusers, front-line staff and members of the public to understand that domestic violence includes different forms of physical, psychological or sexual abuse, and that the victims of such behaviour are protected under the Ordinance.

On the other hand, there are views that domestic violence should be criminalized. Madam President, the Ordinance is one of the ordinances that deal with domestic violence under our legislative framework, which provides civil remedies to the victims. For violent behaviour involving criminal offence, sanctions on the abusers are available under our existing criminal legislative framework, which includes the Offences against the Person Ordinance and the Crimes Ordinance. I wish to stress that the criminal laws of Hong Kong found their basis in the criminal acts themselves. So, no matter what relationship the abuser and the victim have and no matter where the violent behaviour takes place, people who commit violent crimes will be subject to legal sanctions. Therefore, the Government did not suggest the inclusion of criminal provisions in the Ordinance to deal with violent behaviour among family members.

Madam President, domestic violence is a complicated problem that must be tackled by strategies of different aspects and perspectives. The Government endeavours to combat domestic violence and provide the victims with a series of preventive, supportive and specific services. Over the past few years, we have been injecting additional resources to enhance our support to the victims and needy families. This year, the total amount of relevant provision has reached \$1.4 billion. Furthermore, extra efforts have been made to promote family

education and mutual assistance within the community, as well as to proactively approach the needy families for early intervention to help resolve their problems. Being an essential element in the combat against domestic violence, this time, we propose to amend the Ordinance to enhance the legal protection for victims.

I hope that Members will support and pass the Bill early. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Domestic Violence (Amendment) Bill 2007 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 Copyright (Amendment) Bill 2006.

COPYRIGHT (AMENDMENT) BILL 2006

Resumption of debate on Second Reading which was moved on 29 March 2006

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.

MR SIN CHUNG-KAI (in Cantonese): I now table the Report in my capacity as Chairman of the Bills Committee on Copyright (Amendment) Bill 2006 (the Bills Committee). The Bills Committee has held 24 meetings with the Administration to scrutinize the Copyright (Amendment) Bill 2006 (the Bill), and we have considered the views of 90 copyright owners and users organizations and professional bodies. The deliberations of the Bills Committee and the

views expressed by various parties have been explained in detail in the written report.

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

The Bill mainly seeks to amend the Copyright Ordinance, with a view to enhancing copyright protection and improving the copyright exemption regime. Members were fully aware that copyright owners and users, due to consideration of their respective interests, held divergent views over many of the proposals in the Bill. The Bills Committee considered it most important to ensure that the legislative proposals concerned will strike a reasonable balance between the interests of copyright owners and users.

The Bills Committee noted that under the Bill, the criminal liability of business end-users for possession of an infringing copy would remain to be applicable only to computer programs, movies, television dramas and musical recordings (the Four Categories of Works). The Administration's proposal has the support of trade organizations of the banking, retail management, and the industrial and commercial sectors. However, there was strong objection from copyright owners of printed works, for they considered it unfair to accord less protection to a specific type of copyright works. The Bills Committee appreciated that due to the intrinsic nature of printed works, criminalizing the possession of a photocopy of such works may be too draconian.

Given that infringement on an extensive scale and on a regular or frequent basis will result in financial loss to the copyright owner concerned, the Administration proposed the introduction of the business end-user copying/distribution offence to criminalize acts of making and distributing infringing copies of copyright works published in four types of printed works, namely, newspapers, magazines, periodicals and books. Many business organizations have raised objection to the proposal on the ground that the proposed offence will adversely affect dissemination of information and normal operation of business. The Bills Committee noted that the Administration proposed to exempt certain educational establishments from the proposed criminal offence and provided defences under certain specified circumstances. However, copyright owners opposed granting unconditional exemption to educational establishments.

Besides, the Administration proposed that after the enactment of the Bill, the future Secretary for Commerce and Economic Development may make regulations to specify the numeric limits of the "safe harbour" within which infringing acts will not be criminalized. Before the making of the regulations, the provisions in relation to the business end-user copying/distribution offence will not apply. The Bills Committee noted that some copyright owners considered the proposed thresholds of the "safe harbour" too lax, whereas business chambers and professional bodies considered that the numeric thresholds may be inadequate for meeting the needs of large business establishments or large-volume users. Publishers considered that the Administration should submit the detailed "safe harbour" formulation for the Bills Committee's consideration in conjunction with its scrutiny of the Bill, instead of dealing with it at a later stage after the passage of the Bill. The Administration has assured Members that it will maintain dialogue with the stakeholders with a view to reaching some common grounds. The subsidiary legislation will be subject to negative vetting by the Legislative Council and so, Members will still have the opportunity to discuss it. The Bills Committee also discussed whether the scope of the provision empowering the Secretary to make regulations is too wide. The Administration subsequently agreed to introduce an amendment to spell out, in a more definitive manner, the factors which the Secretary must take into consideration.

To enhance corporate accountability and governance, the Administration proposed to provide that the director(s) or partner(s) of a company will be liable for infringing acts of the company unless there is evidence showing that they have not authorized the infringing acts in question. Although the Administration explained that this is only an evidential burden, in view of the concern expressed by small and medium enterprises, Members urged the Administration to consider specifying in law in a definitive and exhaustive manner more specific guidelines for the relevant persons to discharge the evidential burden. The Administration will introduce an amendment to set out more specifically the conditions for the defendant to be regarded as having adduced sufficient evidence. The Bills Committee also discussed the Administration's proposal to introduce defence provisions for employees.

In view of the development of digital technology, the Administration proposed to make civil and criminal provisions, with a view to providing protection against activities that circumvent the technological measures used to protect copyright works. The Bills Committee noted that a number of

organizations representing the musical recording, broadcasting, film and software industries object to the requirement to prove "knowledge of infringement of copyright" on the part of the circumventor in order to establish the civil liability. They consider that the "knowledge requirement" is a barrier to effective protection of technological measures and that it will also create loopholes in enforcement. After further discussion with the industries, the Administration agreed to delete the "knowledge requirement" from the new sections.

One of the most controversial proposals in the Bill is the shortening of the period of criminal liability for parallel importation under the Copyright Ordinance from the existing 18 months to nine months. The education sector, the Consumer Council as well as the commercial sector are highly in favour of the proposal, for they consider the proposal conducive to free circulation of goods, while copyright owners, particularly the film, music and publishing industries, are strongly against it. They are of the view that it will weaken protection for copyright owners and stifle the development of Hong Kong's creative industries. The Bills Committee appreciated the diametrically different views held by copyright owners and users and it is, therefore, necessary to strike a balance between their interests. The Administration has made it clear that its long-term objective is to fully liberalize parallel imports in Hong Kong, but it agreed to adopt a progressive approach and will therefore introduce amendments to provide for a criminal sanction period of 15 months.

After submitting the report to the House Committee on 8 June, the Bills Committee received a further submission from The Law Society of Hong Kong (Law Society) on the term "lawfully made" as well as the Government's response. Besides, Law Society considered it necessary to include an "affidavit provision" under section 121 of the Copyright Ordinance, in order to further protect the rights of copyright owners in Hong Kong. However, the Administration is of the view that there has not been any operational problem and considers the inclusion of this provision unnecessary. The Administration has also exchanged views with Law Society on the drafting of the proposed provision. In this connection, Ms Margaret NG will move an amendment to include an "affidavit provision" in the Bill.

To improve copyright exemption, the Administration introduced the "fair dealing" principle and proposed the addition of a broader exemption provision for education. The Bills Committee noted the concern of the music, film, video

and publishing industries that in a digital environment, schools enjoying such exemption may become a safe haven for online piracy. After consideration, the Administration will propose an amendment to provide that applicability of the "fair dealing" provision should be conditional on the adoption of "access control" measures by educational establishments under specified circumstances. The Bills Committee did not oppose the above arrangements, but some members considered that the safeguards must be viable and will not impose an undue burden on the education sector.

The Administration also proposed to add a new provision on fair dealing for the Government, the Executive Council, the Legislative Council, the Judiciary and District Councils. Members of the Bills Committee questioned the rationale for including the Legislative Council and the Judiciary under the proposal, given that proceedings of the Legislative Council and judicial proceedings are already covered by the permitted act provisions in the existing Copyright Ordinance. At the request of the Bills Committee, the Administration sought the views of The Legislative Council Commission (LCC) and the Judiciary Administrator. The proposed provision is welcomed by the Judiciary. After discussion with the Administration, the LCC agreed that the effect of the Administration's amendment is to provide copyright exemption for an act done by or on behalf of Members of the Legislative Council and the LCC for the purposes of the exercise and discharge by the Legislative Council of its powers and functions pursuant to the Basic Law and other applicable laws.

To respond to the concern of copyright owners, the Administration proposed to introduce rental rights for films and comic books. Copyright owners may seek judicial review in respect of unauthorized rental activities. Moreover, the Administration agreed to propose an amendment to the effect that insofar as comic books are concerned, the coverage of "rental" will be extended to include the making available of copies of the work for on-the-spot reference subject to direct or indirect payment.

Given that different sections will have different commencement dates after the enactment of the Bill, the Bills Committee urged the Administration to commence operation of the enacted sections in one or two stages as far as possible, in order to avoid confusion.

In view of the concern of the Bills Committee and the organizations concerned, and in order to improve the drafting of the clauses, the

Administration will propose a number of amendments. The Bills Committee will not move any amendment under its name.

Deputy President, now, I would like to speak briefly on the Bill on behalf of the Democratic Party.

The Democratic Party will support the Government's motions and we will also support all the amendments proposed by the Government today.

Deputy President, this Bill was actually proposed in 2001..... it should be 2000, to make amendments to the Copyright Ordinance, and after it came into operation on 1 April 2001, an uproar was aroused in society. The Government subsequently suspended the Ordinance in May and this Bill was proposed after about six years of discussion and consultation. Indeed, it has been held up for a very long time. If my memory has not failed me, the Government has extended the effective period of the suspension thrice and so, it has taken a very long time indeed.

When this Bill was proposed in 2006, there were actually quite a lot of views expressed, and there was indeed great divergence of opinions between representatives of the industries and the Government. As I said earlier on, the Government has successfully struck an appropriate balance among the opinions of the organizations concerned, some of which represent the opinions of users and some represent those of copyright owners.

Deputy President, here, I must commend two colleagues from the Commerce, Industry and Technology Bureau, Deputy Secretary Christopher WONG and Ms TO, who have made enormous contribution to this Bill and listened to the views of many people before introducing the amendments.

The only regret is Margaret NG's amendments, and I would like to say a few words about them. I think the amendments in general have actually addressed most of the opinions, or we should say that they have already answered the opinions of most people. Even if they may not have fully answered them, the amendments are still broadly acceptable to all sides, just that Law Society proposed their amendments only after the Bills Committee had completed its scrutiny of the Bill. Had we been able to examine those amendments earlier, I believe the matter would stand a greater chance of being resolved more satisfactorily.

However, after making reference to the Government's response and the requests made by Law Society — as far as I understand it, Margaret NG will propose the amendments on behalf of Law Society today — after making reference to the views of both sides, I personally..... The Democratic Party considers that we will support Margaret NG's amendments. Certainly, both sides have their justifications but I think that under the circumstance, Margaret NG's amendments can provide an additional safeguard and I do not see that it will bring any adverse effect. So, the Democratic Party will support Margaret NG's amendments, and we will also support all the amendments of the Government.

I hope that there will be a happy ending today. I so submit.

MR LI KWOK-YING (in Cantonese): Deputy President, protection of intellectual property rights is not only an international obligation or a sign of enhanced international image, but an important pillar of wealth creation in a knowledge-based economy. Therefore, we should attach importance to intellectual property rights and endeavour to protect them. Take the Microsoft as an example. The wealth that it created reached as much as a gross profit of US\$9.598 billion in the second quarter of 2006. But while efforts are made to protect intellectual property rights, we must at the same time effectively safeguard public interest and avoid causing nuisance to the public by all means, particularly to their daily activities not intended to make profit. Therefore, while we work for the protection of intellectual property rights, it is also necessary to strike a balance between the protection of copyright owners and users, and put in place for the local community a sound intellectual property rights protection system which suits the local situation.

In this connection, we are particularly concerned about the problems relating to the exemption regime under the Copyright Ordinance. Firstly, we agree that in order not to adversely affect education activities, educational establishments should be exempted from criminal liability. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) considers the relevant measures necessary, or else education can only be provided in apprehensions, and the resultant loss would be unimaginable. The Copyright (Amendment) Bill 2006 (the Bill) proposes another safety net to cushion the impact on education. An exemption regime was introduced using a "fair dealing" approach whereby non-exhaustive factors will be taken into

consideration in granting exemption. Given that the factors for considering "fair dealing" are not set out in an exhaustive manner, we can imagine that disputes may arise in the early stage of implementation. The DAB suggests that meetings be held on a regular basis to foster communication between educational establishments and copyright owners, so that possible copyright-related problems can be dealt with early at the initial stage.

Meanwhile, there is concern that schools may become a safe haven for online piracy. We are also concerned that with the popularization of computers and technological advancement, infringing materials can be disseminated to places all over the world in a short time through online piracy activities. Therefore, to allay this concern, we should consider taking steps to tackle copyright infringement at source by introducing copyright protection technologies to prevent copying and distribution, so that students will start learning to protect intellectual property rights in a school environment. While these measures will require the support of resources, we hold that copyright owners should seriously consider the development of these technologies in order to achieve copyright protection.

Apart from specific "fair dealing" provisions, the Bill also includes general "safe harbour" provisions. The authorities proposed to specify by way of subsidiary legislation numeric limits within which copying and distribution will not constitute a criminal offence. In fact, it is not easy to set a reasonable numeric limit for copies of copyright works, and members of various sectors of the community have their own opinions and aspirations. To facilitate smooth enforcement of the ordinance, we hope that the authorities can extensively listen to the views of various sectors of the community before the "safe harbour" provisions are established and strike a balance between the protection for copyright owners and the interest of users. The DAB hopes that a consensus can be reached among the stakeholders as soon as possible in order to implement the relevant measures.

On the other hand, in some sectors, such as the legal profession, possession of copies of copyright works is inevitable due to the needs of their work in the course of operation. On the provision of legal advice in relation to an infringing copy, the DAB welcomes that an amendment will be proposed to exempt legal professionals from criminal liabilities in this respect. But if members of the legal profession made quite a number of copies of the relevant parts of law books for internal reference or circulation, the Administration does

not intend to provide exemption, and the Government only proposed that consideration could be given to working out a licensing scheme. We hope that in formulating the licensing scheme, publishers will take into full consideration and draw a distinction between "copying for distribution" and "copying for reference". The former is mainly done for distribution purposes, whereas the latter is done perhaps because it is inconvenient to carry the book or as a mere expediency measure to enable more than one person to make reference to various parts of the book at the same time. The major difference between them is that "copying for distribution" constitutes infringement of copyright whereas "copying for reference" is only a nominal and temporary infringement which does not cause any substantive harm to the copyright owner.

The DAB is also concerned about the criminal liability of directors and partners *vis-a-vis* the exemption provisions for employees. The authorities proposed that the body corporate or the partner shall be liable unless there is evidence showing that the infringing act in question is not authorized by the internal management. In this connection, many small and medium enterprises have expressed concern about the proposed evidential burden, for they may not have sufficient knowledge and technologies to ascertain whether their staff have used or installed certain infringing copies of copyright works. Having considered this concern, the authorities proposed that if the Court is satisfied that the defendant has set aside financial resources for acquisition of a sufficient number of copies of the copyright work concerned, then the defendant will be regarded as having adduced sufficient evidence. However, the industry is still apprehensive about this provision. The DAB proposes that apart from launching publicity and public education activities, consideration should be given to drawing up guidelines for determining what constitutes a "sufficient" number.

Besides, I would like to express my view on the implied transfer of copyright. During the discussion on the Bill, the DAB was concerned about the protection of the general rights under the copyright legislation, especially the question concerning the implied transfer of copyright. Copyright is an inherent right without having to go through any registration procedure and so, the general public may not be aware of the principle that the copyright belongs to the author of the work, whether the work is commissioned by another person or given by another person as a gift. In other words, even if the work is commissioned by another person and the commissioner has paid a sum of money to the author as a reward for the work done, but if both parties have not entered into an agreement on ownership of the copyright, then the copyright of this piece of work will still belong to its author under the law.

We often come across the issue of copyright of commissioned work in our daily lives, which is of less public concern and more often neglected by the public. The most obvious example is taking photographs for use on identity documents at a photographic studio. Even though we do pay the studio for taking our photographs, it does not mean that the copyright of the photographs can be indirectly transferred to the customer through general money transactions, because if both parties do not enter into an agreement on the ownership of the copyright, the copyright of the photographs will belong to the photographic studio.

In that case, if a member of the public goes to another photographic studio to develop copies of a photograph without the consent of the photographic studio which took that photograph, it would constitute an infringement of the copyright of that photographic studio in law. The DAB has written to the authorities to make enquiries about commissioned work, but the reply given to us was that this issue would depend on the specific circumstances of the case and might involve personal data and be protected by the Personal Data (Privacy) Ordinance. Obviously, the answer given by the authorities does not get to the core of the concern of the DAB; nor has it taken into account the fact that members of the public do not have the knowledge to request ownership of copyright from the photographic studio. The DAB proposed that the authorities should seriously consider introducing legislative amendments to provide that when a customer collects his photographs and if the photographic studio has given to the customer the photographs together with the negatives, that would be considered as a transfer of copyright.

Generally speaking, the protection of intellectual property rights is closely related to the image of Hong Kong as well as the development of society, and rapid technological development has brought many more challenges to copyright protection. However, we hope that the authorities can extensively consult various sectors of the community before introducing any amendment. On the other hand, while efforts are made to protect intellectual property rights, it is also necessary to clearly explain to the public the conditions of legitimate use of copyright, so that while the interest of copyright owners is duly protected, members of the public can feel at ease in using copyright works, which will continuously take forward the development of society and promote creativity. Only this is the way how the policy on copyright is best implemented.

Finally, Ms Margaret NG has proposed an amendment to include a mechanism whereby an affidavit is used to prove that certain copies are "lawfully made" and also other relevant amendments. The amendments provide that if an affidavit has been made by the copyright owner stating the name of the copyright owner, that a copy of the work exhibited to the affidavit is a true copy of the work, and that certain copies of the work are infringing copies, then the copies shall be presumed as not lawfully made.

Given that this proposal involves a third party, who is the person alleged to be the owner of the infringing copy, and as the amendment does not provide for a mechanism for this third party to prove the contrary, it is undesirable to unilaterally presume that the copy was not lawfully made. Meanwhile, as the amendment provides that the evidence shall be admitted without further proof, it may lead to abuse easily. Moreover, copyright owners in various sectors did not express opposition to the proposed provision when the Administration consulted them on the definition of "lawfully made", and as the users have not made such a request either, it is, therefore, unnecessary to include this provision at the present stage.

Deputy President, the DAB supports the resumption of the Second Reading of the Bill and the amendments proposed by the Administration, and we oppose the amendments proposed by Ms Margaret NG.

DR YEUNG SUM (in Cantonese): Deputy President, the Democratic Party has received an enquiry from a member of the public. He asked if there are some out-of-print books which he can only borrow from libraries and which he cannot possibly buy even if he is prepared to pay, is he allowed to make copies of the books for his own use? Will he breach the law in so doing? Certainly, we may need much background information and make many assumptions in order to answer this question, but this example has clearly explained that copyright is not a black-and-white issue, and there may be many grey areas.

As computer technologies become more and more popular, copying of copyright works will become even easier. How should we define the interest of copyright owners so that they can obtain reasonable return for their creation? In the meantime, how can we ensure reasonable use of copyright works by the general public? How can we protect copyright while ensuring free flow of information?

I must state clearly that the Democratic Party supports that copyright owners should obtain the return to which they are entitled, or else they cannot make ends meet, or if the return is disproportionate to the efforts that they have made, nobody would be willing to continue with their work and it would be difficult for Hong Kong to survive in a knowledge-based economy. However, I wish to point out that no matter how we will draw the line in respect of copyright infringement, there will inevitably be cases which involve reasonable use of copyright works and at the same time infringement of copyright.

This Copyright (Amendment) Bill 2006 (the Bill) has provided greater statutory protection for copyright in respect of four types of printed works, namely, newspapers, magazines, books and periodicals and criminalized acts of significant infringement while allowing non-frequent use of copyright works by the general public as long as the financial interest of the copyright owner is not injured. For instance, reasonable use of copyright works is allowed within the limits of "safe harbour". Even though there is still some extent of divergence between Members in their opinions on the Bill, this is broadly a fair proposal and so, the Democratic Party will support the Bill.

The Bill has also allayed the concern of most subsidized and publicly-funded schools and their teachers. For example, when they come across copyright problems when using such printed works as newspapers and magazines, even private, independent educational establishments will be allowed to use copyright works on a need basis for teaching purposes as long as it is not against the principle of fair use, and this has addressed the needs of teaching. The use of copyright works other than the four types of printed works specified in law by schools will also be allowed as long as such use is in line with the "fair dealing" principle. The only problem is: I maintain that when defining "fair dealing" in law, if a more definitive and exhaustive approach can be adopted in setting out what acts are considered acceptable, it could better resolve the uncertainties or ambiguities in the education sector caused by the use of a non-exhaustive approach.

The Democratic Party considers that the Government has, in the Bills Committee, taken on board many opinions put forward by members. For instance, when schools make copies of copyright works for uploading onto the Intranet, they can do so only for a limited period of time and they must also ensure that the use of these materials is restricted to teaching activities by a limited categories of people, and this will strike a balance between the interest of copyright owners and the needs of teaching activities. As for

performance-related activities, the composition of audience is expanded to include parents and relatives who will be allowed to participate in the activities, and this has addressed the needs of the education sector in promoting parents' participation in school activities.

Deputy President, the last book of the *Harry Potter* series will be published next month and I believe many young readers are eagerly waiting for the new book. The author of this novel said that she had spent 10 years thinking about the plots of this novel which is extremely popular in all parts of the world. It has made the author rich and given the author the respect due to her. Regrettably, many literature works, including novel and prose, in Hong Kong are subject to serious copyright infringement in the Mainland. Movies, music and television dramas also meet the same fate in the Mainland and in Hong Kong. If the interest of the authors is not duly protected, what is there for us to encourage the continued development of the creative industries in Hong Kong? What is there for us to ask the people to give play to their creativity?

Recently, it has been reported in the press that in an essay writing competition, an entry was found to have plagiarized other writings, and this is so regrettable. The objective of an essay writing competition is definitely to encourage students to give play to their creativity through the competition. I hope that this is only an individual incident and that it happened only because our young people do not have a clear concept of plagiarism, rather than an intentional attempt to seek personal gains through copyright infringement. In fact, as an educator, I, as well as my colleagues, often face a situation where our students' homework may not be the outcome of their own creation or studies, or the source of the information use is not clearly indicated. Moreover, the record industry and the movie industry are also very concerned about the magnitude of illegal uploading and downloading activities on the Internet. All these have sounded the alarm which indicates a weak concept of intellectual property rights among the youngsters.

The Democratic Party considers that after the enactment of the Bill, it is necessary for the Government to continuously step up public education, especially among the young people, business enterprises and educational establishments, to promote their understanding of the relevant legislation, so that they would not breach the law inadvertently. This will also be conducive to developing a culture which respects intellectual property rights.

Deputy President, I so submit.

MR ANDREW LEUNG (in Cantonese): Deputy President, the Copyright (Amendment) Bill 2006 involved a very complicated process of amendment covering a multitude of issues in a wide spectrum of areas. While the Legislative Council has discussed it for over a year and listened to the voices and opinions of various organizations and the Bills Committee has also repeatedly discussed the amendments of the Bill, consensus has not been reached in society on some of the clauses. For example, with regard to the criminal liability of directors or partners, the liability period for parallel imports of copyright works, and the "safe harbour" provisions, the Federation of Hong Kong Industries (FHKI) does not entirely agree with all the amendments proposed by the Government. But as I said just now, as the Bill has a very extensive coverage, the FHKI will not oppose the Bill as a whole.

As the Commerce, Industry and Technology Bureau told us at the last meeting of the Bills Committee, after the completion of this amendment exercise, they will immediately embark on the making of subsidiary legislation to prepare the relevant subsidiary legislation on, among other things, the "safe harbour" provisions. The FHKI and I hope that the government departments concerned, in the subsequent drafting and discussion of the subsidiary legislation, can more comprehensively consult and listen to the views of different organizations, in order to balance the interests of various sectors of the community.

Among the many amendments proposed, the criminal liability of directors or partners is of the greatest concern to the FHKI and also to the entire industrial and commercial sectors. The Government originally planned to introduce a new section to provide that the director or partner would be criminally liable for the use of pirated copies by the staff of the company, rather than the company being convicted and fined as in the way that most piracy cases are handled now. Under this proposal, the director or partner has to adduce evidence to prove their innocence in order to put up a defence. Although the Government had stressed repeatedly that under this proposal, the burden on the defendant would only be an "evidential burden" while the burden of proof would remain on the prosecution and that their intention was not to put all the burden of proof on the director or partner, the FHKI and I are concerned that the so-called evidential burden is meant to shift part of the burden of proof onto the company director or partner, and this is not in line with the common law principle that the onus of proof totally rests with the prosecution. This has aroused great reactions in the industrial and commercial sectors.

As I said in the Bills Committee, this amendment basically will not pose any problem to large enterprises or conglomerates, but it may cause directors or partners of small and medium enterprises (SMEs) to unwittingly fall foul of the law. As I stressed time and again in the Legislative Council, SMEs account for an extremely high percentage of over 90% of local enterprises, and not many proprietors of these SMEs have knowledge of the legislation or computer application or for distinguishing whether the software used in the company is an authentic version or not. As they generally lack resources and relevant knowledge, it is very difficult to expect them to be able to ascertain whether their employees have used or installed any pirated versions of computer software or infringing copies of other copyright works.

Because of strong reactions in the industrial and commercial sectors, and in order to address the concern of the sectors, the Government has proposed further amendments to the effect that the director or partner may abduce as evidence that financial resources have been set aside or expenditure incurred for acquisition of a sufficient number of copies of the copyright work concerned or appropriate licences to make or distribute copies of the copyright work concerned for use by the company in order to meet the needs. This amendment is to some extent welcomed by the industrial and commercial sectors, as they consider that the authorities have positively responded to their concern and used wording with greater clarity and which are easier to understand to allay the worries of company directors or partners. But the FHKI and I are still concerned about the words "sufficient" and "appropriate" used in the clause, which have too broad a meaning, and we hope that the authorities can take this opportunity to explain this more clearly.

With regard to the "safe harbour" provisions, the FHKI and I have put forward many opinions. The circulation of information has become much easier nowadays and in order to keep tabs on the trends in society, many companies often hold brainstorming meetings on the latest information where everyone will have a photocopy on hand and this has become a habit of many companies. Very often, for convenience sake or as an expediency measure at meetings, photocopies of newspapers, magazines and periodicals are prepared or papers are circulated by way of e-mails. So, the limits of "safe harbour" are the decisive factor of whether the company will be prosecuted for infringing copyright. It is, therefore, necessary to take care of the needs of SMEs, while preventing copyright owners from asking for a staggeringly high price from large enterprises when they subscribe to "licensing schemes" in compliance with the law.

The period of criminal liability for parallel imports, or more colloquially called "grey goods", is also of concern to the industrial and commercial sectors. At present, the statutory liability period is 18 months. The Government initially proposed to amend it to nine months but after discussion for a year or so, it was finally decided to be 15 months. The FHKI considered that this amendment is only a small step taken towards globalization of the circulation of knowledge which fails to respond to the general trend of increasingly frequent, easier exchanges in the globe. The FHKI and I have all along proposed the deletion of the liability period for parallel imports. Not that we intend to make business operation more difficult for local exclusive licensees. On the contrary, this can more effectively combat piracy. Moreover, the colloquial expression of "grey goods" carries a rather derogative meaning in one way or another. Parallel imports of copyright works are not pirated goods, just that they are produced in places outside Hong Kong through an up-to-standard manufacturing process and with full payment of royalties. We absolutely cannot consider the importation of these copyright works for which royalties have been fully paid as a criminal offence within the liability period because they were purchased overseas and then institute prosecution and impose criminal sanctions. As the authorities said at the meeting, Hong Kong is the freest market economy in the world and the long-term objective of the Government is to fully liberalize the use of parallel imports of copyright works in Hong Kong. The amendment is only a very small step taken, which inevitably gives the impression of marking time. We hope that in the foreseeable future, the authorities will give a positive and encouraging response to what I have just said.

With these remarks, Deputy President, I support the Second Reading of the Bill and the Government's amendments.

MS AUDREY EU (in Cantonese): Deputy President, our discussion on the resumption of the Second Reading debate on the Copyright (Amendment) Bill 2006 (the Bill) today has evoked some memories in me.

I remember that not long after I had joined the Legislative Council, the Copyright (Amendment) Ordinance 2000 was enacted. A huge public outcry was aroused at that time because the Copyright (Amendment) Ordinance 2000 (the Ordinance) was discussed and endorsed in only a few weeks' time by the last Legislative Council during its last Session. But it was found only on the day when the Ordinance came into effect that the Ordinance would give rise to very, very big problems, some of which were even downright absurdities.

Finally, the relevant government officials had to come to the Legislative Council to offer an apology to the public, followed by the suspension of the Ordinance. During the suspension, the Ordinance applied only to four specified categories of copyright works, namely, computer programs, movies and television dramas, whereas the Ordinance was suspended in all the other areas. Besides, whenever the effective period of the suspension was about to expire, the Government had to again extend the effective period of the suspension in order to have sufficient time to hold discussions with various sectors of the community. The Bill under discussion today is actually an attempt to patch up the Ordinance enacted back in 2000.

From all the past developments, the Legislative Council and the Government should learn a lesson. The making of legislation should be a very stringent process. Without careful, in-depth consideration and thorough consultation, and if legislation is enacted only rashly in a haphazard manner, we would only have to swallow the bitter pills in the end.

Even though the Second Reading debate on the Bill is resumed today, it does not mean that we have solved all the problems. On the one hand, copyright laws are very, very complex. I remember that when I spoke on the Amendment Bill in 2000, I cited the quotes by Mark TWAIN to explain that even to the legal profession, copyright itself is also very, very difficult and even lawyers may not necessarily understand copyright laws. While they may sound easy, the contents are actually very, very complicated.

Moreover, there are several factors adding to their complexities. On the one hand, due to rapid technological advancement, laws often have to progress with the times, and to cater for different mediums and different media, many considerations are often involved. On the other hand, to protect the interest of copyright owners, we must protect copyright but at the same time, if the laws are too draconian, the circulation of information would be stifled. Therefore, insofar as the amendments proposed in this Bill are concerned, the Government has, in fact, discussed the problems with members from various sectors in the hope that this Bill can strike a balance.

The print media is a key area in this amendment exercise. Under the existing legislation, possession of photocopies of printed works, such as books and newspapers, in the course of business may involve civil liability, although no criminal liability will be involved. The Bills Committee has discussed whether

criminal liability should be imposed on copying for distribution purposes in the course of business in respect of new section 119B proposed in clause 24. If copies of newspaper or magazine articles are made solely for internal circulation, discussion or reference, does it constitute an intentional or unintentional attempt to infringe on the interest of the copyright owners? As these copies are made only for internal discussion or circulation with no direct bearing on business gains, should they enjoy exemption? Certainly, extensive copying and distribution of newspaper or magazine articles may, to a certain extent, constitute significant infringement if it is done on a regular or frequent basis even though it is purely for internal circulation purposes. So, full exemption from criminal liability may not be entirely justifiable.

The solution is perhaps to deal with the problem through market force. If it is necessary in various sectors to make copies of newspaper or magazine articles on a regular or frequent basis or on an extensive scale for internal circulation, they should obtain a licence from the copyright owner. But how should provisions be made on the licensing arrangement? Will too much stress be put on copyright owners? What are the different considerations of various sectors? So, it is not an easy problem to resolve.

How should "frequent" be defined? The Government proposed the formulation of the so-called "safe harbour", trying to work out a quantifying approach to define what constitutes "extensive copying on a regular or frequent basis" while balancing the interests among different media or different sectors and clearly providing for the thresholds. So, the Government still considers further discussion necessary and will proceed to the making of subsidiary legislation after the primary legislation is endorsed.

In this regard, I, like Mr SIN Chung-kai, must thank all officials of the Commerce, Industry and Technology Bureau who have worked very hard to communicate with members of many different sectors. For example, I have reflected to them the situation of the Bar as extensive copying is often involved in our practice, explaining that if we will be subject to the same provisions as those requiring compliance by other sectors, it may lead to inconvenience or unfairness as a result of deviations from the existing practices. This problem has remained unresolved.

Yet, we will continue to discuss this in the future after the enactment of the primary legislation. From this we can see that even if the primary legislation is

enacted, there will still be many grey areas or gaps, which need to be addressed expeditiously.

In this connection, the Government has proposed that licensing schemes be developed on the one hand and subsidiary legislation be discussed and enacted expeditiously on the other. But I think neither of these directions can address the problem in a short time. So, apart from maintaining close communication with the relevant sectors, the Government must also enhance public education, in order to provide support and to progress with the times while meeting the world standards of copyright protection.

Furthermore, Deputy President, I would like to respond to what Mr LI Kwok-ying said earlier on. He particularly pointed out that Ms Margaret NG would propose an amendment to the effect that an affidavit can be used as proof of a rebuttable presumption and he considered this to be *ex parte*, which could easily lead to abuse or create loopholes and so, the DAB does not support it.

Deputy President, I was a bit shocked at hearing this from him because Mr LI Kwok-ying is also a member of the legal profession and I think he should understand this only too well. Very often, when an application is made, it may really be necessary for the applicant to provide evidence by way of an affidavit at the first stage and if no other evidence is submitted, it will become a preliminary presumption which is absolutely rebuttable if the opposite party has submitted evidence to prove the contrary. This is a most common practice which will create neither unfairness nor loopholes, because this is always the case in every lawsuit. Proceedings certainly involve two parties. After a party submitted the evidence, the Court would presume that something is true after examining the evidence but if the opposite party submitted evidence to prove the contrary, the previous evidence would be overthrown. This is often like passing the ball to each other with one player serving the ball and the other player returning it.

The solution proposed by Law Society is absolutely neutral to parallel imports. Their proposal serves only to provide more expressly a clear procedure for copyright owners in respect of the submission of evidence, with a view to protecting copyright owners. But in the case of parallel imports, their proposal will also allow the other party to submit evidence to prove that the product in question is parallel imported or lawfully made.

Therefore, the method or the amendments proposed by Law Society absolutely will not cause injustice or unfairness. I very much hope that Mr LI Kwok-ying and colleagues from the DAB can gain a fuller understanding of the amendment. He is not in the Chamber now, and I hope he will come back later and listen to Ms Margaret NG's explanation when she proposes her amendment. I hope that this can help allay his concern and that of the DAB, and I also hope that other colleagues of the Legislative Council will support the amendment. I think Law Society proposed this amendment absolutely not for personal gains or the interest of a particular sector, but from the perspective of public interest.

With these remarks, I support the resumed Second Reading of the Bill. Thank you, Deputy President.

MR JEFFREY LAM (in Cantonese): Deputy President, the business sector has always believed that intellectual property rights protection is vitally important to creating a better business environment and boosting our economy. The Copyright (Amendment) Bill 2006 (the Bill) tabled by the Government contains a number of proposals, including shortening the criminal liability period for importation of parallel imports to 15 months, introducing rental rights for films and comic books, defining criminal offences relating to infringing copies of copyright works, and so on, for the purpose of further protecting copyright works. The Hong Kong General Chamber of Commerce supports the Bill in principle because it will enhance intellectual property rights protection and root out copyright piracy.

However, the business sector has some reservations about the part relating to "directors/partners criminal liability" in the Bill. The Government has originally proposed in the Bill that if a body corporate or partners have committed an act attracting "business end-user criminal liability", the directors or partners will also be liable unless they prove that they have not authorized the infringing act.

This proposal has inevitably given people an impression that, unless the directors or partners can prove their innocence, they will be considered guilty, thereby shifting the burden of proof to the directors and partners. In my opinion, Deputy President, this proposal is not compatible with the spirit of common law of presumption of innocence on the part of the defendant.

Although the Government emphasizes that this is only an evidential burden and the burden of proof by adducing evidence still remains with the prosecution, I still think that the burden of proof on the defendant will thus be inevitably increased. I therefore reflected our concerns in a meeting of the Bills Committee. The Government eventually made a concession by proposing a new amendment to simplify the burden of proof by allowing defendants to produce financial records and guidelines to prove his innocence to make the evidential burden easier for them.

Although the amendment may help ease the burden of proof on directors, operators of small and medium enterprises (SMEs) have limited resources and might not have adequate professional knowledge of infringing acts. It is very often difficult for directors/partners to ascertain whether their employees have used or installed infringing copies, thus making it easy for them to be caught by law. Sometimes, they might have committed the infringing acts out of oversight more than deliberate infringement. The proposed evidential burden will bring certain pressure to bear on SMEs too. For these reasons, the Hong Kong General Chamber of Commerce and I disapprove of the evidential burden. After all, we believe that the burden of proof should be fully borne by the prosecution and should not be shifted to directors or partners.

It must be reiterated that the business sector absolutely agrees that respect for intellectual property rights is vital to good business governance. However, it is hoped that the authorities can, in making relevant decisions, still consider the concerns of SMEs. If the authorities really seek to raise enterprises' awareness of intellectual property rights protection and encourage responsible business governance, a more radical approach to be taken is for the burden of proof and evidential burden to remain with the prosecution such that the authorities can still protect the basic rights of defendants and even SMEs while combating infringing acts.

Deputy President, I so submit.

MS MARGARET NG (in Cantonese): Deputy President, in their speeches, Mr SIN Chung-kai and Ms Audrey EU have discussed in detail many of the specific issues and details of the amendments to the copyright Bill today. Therefore, I am not going to repeat them. I merely feel that, the enactment of legislation on

intellectual property rights, started before the reunification, still has a long way to go, even though it has dragged on for 12 years..... or at least 11 years if not 12.

I think I am obliged to raise several points of my personal, general observations. First, although we are talking about intellectual property rights, when we propose amendments and enact legislation, our efforts are mostly concerned with balancing interests in a number of areas and studying ways to come up with a formula to which no one will seriously object, even if it is not agreed by everyone. Sometimes, the authorities take the reality too seriously at the expense of principles. I have no intention to criticize the approach taken by the authorities, given that they do have their difficulties.

First, copyright as related to intellectual property rights is not an actual substance. To a very large extent, it is provided for by law. In fighting for property right, we might accuse someone of stealing our cup, which is an act of theft. Therefore, privacy is also considered an act of theft, but actually this is not. Members might refer to land ownership. Actually, the piece of land in question cannot be taken away. We are actually talking about the diverse interests involved in the utilization and possession of the land in question. To a certain extent, intellectual property rights contain similar elements. Therefore, we have to decide where to draw the line and how to define copyright or intellectual property rights. Sometimes, an all-embracing approach is not advisable.

Second, it must be understood that both copyright and intellectual property rights are unique in the sense that they are a kind of monopoly. Common law in general does not welcome monopoly, because when a certain thing turns into monopoly, it means that it will be regarded by the public as off bounds. In turning a certain thing off bounds for the public, we must act with extreme caution in deciding how far we should go. Sometimes, I heard some views from some organizations. Of course, many commercial organizations are serving their own masters, and their comments may go to the extreme. However, I will still sometimes doubt whether our gatekeepers should act accordingly in such an extreme manner. Therefore, the point of equilibrium in this respect does not hinge on copyright or copyright users. More importantly, a balance must be struck between allowing private monopoly for certain things and allowing the public freedom in exercising their rights without restrictions.

When it comes to intellectual property rights, especially copyright, the existing situation is actually different from what it was decades ago or original copyright. This was what happened in the past: no one was willing to publish the works of some artists or writers and their works were eventually stolen, while the artists or writers, who were unable to make any money, ended up dying romantically and yet miserably.

Nowadays, we are very often not talking about original works. Furthermore, artists or writers have their own ways to protect the products created by them. Neither are we talking about those writers whose works have been pirated or copied and how they have failed to make money, and yet others are making huge profits by taking advantage of their works. The problem before us now is how businessmen are creating and establishing some prohibited areas systematically, so that people cannot but use their products. At the same time, people using their products will immediately come under their control. As far as I know, business monopoly is very often protected by business means. For instance, every commercial product requires accessories. If a certain type of printer is used, the same type of ink must be used, and the same type of paper must be used too. This approach has often been adopted, especially for business appliances.

Of course, it is up to the people to determine the values of their designs. If their products are sold at exorbitant prices, people will naturally be reluctant to use their lines of products. On the contrary, people will use their products if the latter are considered to be worthy. Therefore, this is not monopoly. Even if their products might work better with other products produced by them as well, the possibility of others developing another kind of products to work with their products cannot be ruled out. This kind of protection we are talking about, which is outside the scope of intellectual property rights, concerns how the products developed can bring more generous profits and be used by more people.

What tools are being used by these business empires? Rather than commercial means, they are taking advantage of the law to protect their own interests. What then are they using? They are actually manipulating the power of the establishment. In other words, they are using political power to protect their own interests, so that other people will be controlled by them. For instance, the issue of operating costs, or even what products can be used by schools, can very often be resolved only after these business empires have

developed their social conscience after reaping a lot of money — I have actually seen, on some occasions, some people specializing in manufacturing computer software or engaging in Internet work offer something to repay the education sector or allow other people to use abundant information freely. However, it seems that they will only act in this manner after they have developed their social conscience.

Whenever I heard discussions on this, particularly when I saw the enormous power behind those who came forward to lobby me, I would feel that society was unfair. We should pay attention to this too. Have we gone too far and are there marked inconsistencies in the way we look at intellectual property rights?

In a different situation, we are talking about reports and information rather than original creations. If an article instantly becomes a prohibited area once it is reported, public interest will be jeopardized. If a writer or an artist creates something out of nothing by virtue of his imagination and talent..... however, newspaper articles are, frankly speaking, not the original creations of the reporters (though reporters might sometimes produced their own creations). It is rather because academics or public figures have something worthy to be made known to the public and so, it is conveyed to the public through reporters for public information. However, once it is published, consent must be sought from the writer should anyone wish to duplicate it. In other words, once my comments are published in the newspapers, they will become a prohibited area for the public, including myself. This has really gone too far.

Furthermore, I find marked inconsistencies between the questions raised by The Law Society of Hong Kong (Law Society) and the Bar Association concerning whether the printing of law reports infringes copyright. These law reports are supposed to be used by the public, and it is very much hoped that they are used in this manner because law can be further enhanced with the quoting of official court records. But why would we often criticize the law reports in Hong Kong? Because the relevant reports merely contain comments made by judges without the key points delivered by the prosecution and the defence. This is not good enough insofar as our development of law is concerned.

But why would we attach so much importance to the existence of all these? Because its importance lies in its circulation and extensive use. If a large number of barriers are imposed on everything, it will be very difficult.....

people will easily be treated as breaking the law. It will be totally meaningless if it is not allowed to be used by anyone. The process of reporting involves the contribution and participation of a lot of people. It is unfair that it has to overcome a number of barriers before it is put to use in the future.

Furthermore, there are many absurdities, too. A most typical example is that something not belonging to you is obtained by copying, deceiving or pirating, thereby depriving the original creators of financial gains. This is understandable. However, some lawyers might need to do some photocopying..... every lawyer's office will spend a lot of money on setting up a law library, including purchasing some very expensive law books and law reports, and subscribing to and applying some very expensive electronic books. Indeed, all lawyer's offices and barrister's chambers will spend huge sums of money in this area.

In a meeting attended by a group of people, every participant has to have the relevant books before them for discussion because they cannot discuss out of nothing. But then, a problem will arise. Will such situation occur frequently or too frequently? Will photocopying be required on every occasion as the participants are frequently required to deal with cases? Will photocopying be required frequently? For instance, we have a total of 10 people and we have to photocopy a case report. However, the judge responsible for handling the case was very "long-winded", and the report delivered contains more than a hundred pages. So, can we photocopy three pages only? This is not going to work. We have actually spent a lot of money and we have great respect for copyright. There is absolutely no deliberate attempt to injure others' interests. Nor is the act of photocopy conducted out of dishonesty.

However, such a serious problem is still unavoidable. Are we required to act in accordance with the definition of "safe harbour" in the future? As the matter now stands, it must be dealt with in this manner. I understand that the authorities seek to deal with it with concrete solutions. But actually, the basic concept of the whole idea of copyright has become very weird today. While other human rights covenants are not taken seriously in Hong Kong, all international business covenants have been taken very seriously. Therefore, we attach great importance to copyright and intellectual property rights. However, in this kind of covenants, there is actually a huge gap between the rich and the powerful and those who are penniless. Therefore, Deputy President, I personally am sceptical of the healthy development of this trend.

On the whole, there is certainly nothing we can do about today's debate. We have to deal with real problems with a realistic approach. Therefore, the authorities have to discuss with lots of people until all of them are generally willing to accept. I think that the authorities have worked very hard because this task has been undertaken by several terms of government officials. Furthermore, the relevant government officials have always been very patient and are more than willing to explain to Members. They should be given credit for this.

Deputy President, I feel that Members are not entirely satisfied with the ultimate decision on the issue of parallel imports discussed so far today. However, I believe the outcome will eventually be accepted. Later at the Committee stage, I will propose a minor amendment. Deputy President, I will give a more detailed explanation by then. I hope Mr LI Kwok-ying and Members of the DAB will reconsider the matter because the bad consequences mentioned by them actually do not exist. Insofar as this matter is concerned, both Law Society and the Bar Association have contributed their ideas wholeheartedly. As pointed out by Ms Audrey EU earlier, they have put forward their views not for their own sake or in their own interest. It is rather because intellectual property rights involve lots of details in law and they are experts in this area. Being particularly qualified and experienced in this area, they believe they should provide their professional input. It is worthwhile for us to listen to their advice carefully.

The proposal to be made by me later is worthy of support. Therefore, I will propose an amendment under my name. Throughout the entire process, the authorities have actually listened to the opinion put forward by Law Society very patiently. It is not at all surprising that views are divided in the end. I only hope that I will gain support from Members when I move on to a more detailed discussion later because this will do only good but no harm to the Bill. Thank you, Deputy President.

MR VINCENT FANG (in Cantonese): Deputy President, more than two decades ago, Hong Kong was under constant threat from the "Super 301" imposed by the United States. The bill was specially designed for retaliatory action to be taken by the United States Government against some of its trading partners with relatively weak awareness of intellectual property rights protection, thereby leading to relatively serious acts of piracy or infringement, mainly by

slashing quotas on exporters. At that time, the textile quota was Hong Kong's major export quota. Being engaged in garment export myself, I have been deeply impressed by this part of history.

During the past decade, a lot of effort was made in Hong Kong in intellectual property rights protection and combating piracy, infringement, and so on, with great success. Therefore, the United States Government no longer needs to resort to the bill in dealing with Hong Kong.

Therefore, I support the Copyright (Amendment) Bill 2006 (the Bill), which aims to provide Hong Kong with a strong system of copyright protection. I also hope our knowledge-based economy and creative industries can continue to grow to add value to Hong Kong economy. Nevertheless, all economic developments must be undertaken in a balanced manner by striving to protect the interest of various sectors involved in the developments. While I understand that balancing interests is not at all an easy task, we should absolutely not lose sight of other considerations. What I am referring to is the "use of parallel imports", the most controversial topic of the entire discussion of the Bills Committee.

From the angle of the wholesale and retail sector, I hope Hong Kong can refer to the experience of Singapore in full liberalization of the use of parallel imports. In particular, given the close link between Hong Kong and the Mainland in terms of heavy passenger and cargo flows, copyright products of an unknown amount are brought into Hong Kong for "personal use" on a daily basis. However, having regard to the fact that creative industries are one of Hong Kong's priority points of economic development, the trade has reluctantly accepted the Government's proposal of continuing to restrict the criminal liability period for parallel imports to nine months.

However, it is a great pity that the Government extended the period again to 15 months during the latter half of the discussion. Frankly speaking, shortening the period by three months will not benefit the trade at all.

It has been quite a long time since the enactment of the existing Copyright Ordinance. The criminal liability period for import of parallel imports was set at 18 months back then because information technology was not as developed as it is today. At that time, films or tapes had to be first transformed into stamper discs before production. Alternatively, designs had to be verified through fax

transmission. Therefore, a longer period was required for restriction of the sale of parallel imports on the market for the sake of protecting the interest of copyright owners.

Today, however, with the technological development of everything from information, production, printing to transport, the pace of development is many times faster than what it was when the restriction period was set at 18 months. Judging from the pace of technological and social developments today, a movie will have become an old one in three months. The actual situation has indeed been reflected by the growing number of international first-run movies opting to be shown simultaneously across the world. Actually, wholesalers and retailers can merely sell less popular products nowadays. Furthermore, it must not be overlooked that there will still be civil liability after the 15-month criminal liability period.

During the scrutiny of the Bill, I met with different interest groups and some copyright owners. They have expressed the view that their greatest challenge at present has been brought by information technology as well as the popularity of pirated or infringing products in countries where copyright protection is still inadequate. Therefore, they hope that parallel imports can be more stringently regulated so that they can strive to retain their shares in the local retail market.

People in the fashion industry, in which I am well-versed, often face the problem of copying in other markets. Therefore, I have absolute respect for people engaging in creative industries. However, we should start with the worst instead of the easiest area in tackling the problem. The audio-visual wholesale and retail sector has also complained to me that the volume of records and video discs sold in Hong Kong today represents only 10% to 20% of that a decade ago. Even the sale of copyright audio-visual products is on the decline. Why? As it is known to all, because our neighbours are flooded with pirated and low-priced copyright products, coupled with the huge number of legal and illegal channels available on the Internet for fast and excellent downloading. It is evident that a number of traditional trades and industries are being impacted by digital and information developments.

It is understood that copyright owners do not feel assured about relaxing the period. This is because only three successful prosecutions were lodged with only one conviction in the actions against copyright parallel imports in the past as

the Government's original legislation was too stubborn in making it mandatory for copyright owners to appear in Court to give evidence. Therefore, both the industry and I support the Bill proposing allowing copyright owners or their agents to give an affidavit instead. We hope the relevant protection legislation can better protect the interest of copyright owners and make them feel relieved, so that they will agree relaxing the restrictions on parallel imports.

Although it is eventually proposed in the Bill that the restriction period be set at 15 months, both the industry and I still wish to make a sincere proposal to the Government in the hope that it will continue to study relaxing the restrictions on the use of parallel imports.

Deputy President, I know that the Secretary will definitely say in his response to Members later that the Government will continue to review parallel imports. Although the Secretary is soon to retire, the Government will still continue to operate effectively. Therefore, I hope that the Administration can undertake to conduct a review of further shortening the criminal liability period for parallel imports after a certain period of time after the Bill is passed today. In particular, I hope the Government can further relax its restrictions on parallel imports to allow the retail industry more room to continue in business, especially after progress has successfully been made in copyright protection in the digital environment.

Finally, I would like to thank the Secretary for his good co-operation in this Council for the past three years and wish him a happy retirement. I so submit. Thank you, Deputy President.

MRS SELINA CHOW (in Cantonese): First of all, I would like to declare that I am a member of the Hong Kong Intellectual Property Society, which is specially tasked with promoting intellectual property rights. This is a point I wish to make clear right at the beginning. In the speech I am going to deliver, I will express the views of the Liberal Party on the Bill.

Three colleagues of the Liberal Party have spoken earlier mainly from the perspective of their own functional constituencies. In general, there are no major conflicts between their principles — even if there are some conflicts, they are merely minor ones. I will say a few words about it later. Basically, the Liberal Party is of the view that the importance of intellectual property rights cannot be underestimated.

The Liberal Party has always supported the importance attached by the Government to creative industries because intellectual property rights protection and the development of creative industries are closely related. This explains why this subject has been taken very seriously by us since 1997 when I became Chairman of the Bills Committee of Copyright Bill till 2000, and even today.

Just now, a number of Members discussed the relatively controversial areas in the Bill. Perhaps I should dwell at great length the concerns of the Liberal Party over the criminal liability of directors or partners. We do understand that both employers and employees are liable in workplaces. We absolutely agree with this principle. However, software users are employees for most of the time, and employers will not use software directly. Even if an employee brings a copyright-infringing compact disc back to his office for use, his employer might be kept in the dark. In that case, it is most unfair to hold the employer liable actually. We certainly understand that the existing law has prescribed some requirements stating employers' responsibility that, as pointed out by a colleague earlier, it can be proved from expenditure that employers have borne their responsibility and can then be absolved from responsibility. However, the small and medium enterprises (SMEs) mentioned by Members have always remain an issue of greater concern to us. A large number of SMEs really do not entirely know and understand the extent of the impact of the new legislation, after enactment, on them.

Therefore, we hope to emphasize once again that the Government must make more effort in education in this area, instead of merely publishing an online article in the hope that SMEs will read and understand its content. It is imperative that the Government should really take the initiative in explaining to SMEs in all trades and industries.

During the scrutiny of the Bill, the Government promised to us that efforts would be made in this area. Nevertheless, I hope the Secretary will dwell more on this in his speech later. This is an area of major concern to us. Problems have also often occurred in this area.

The second point I would like to raise concerns parallel imports. Since 1997, whenever the issue of copyright was mentioned, there would be heated arguments on parallel imports. Why? Simply because there are serious conflicts among stakeholders. It is the hope of consumers that the authorities can liberalize the importation of parallel imports, like other intellectual property and goods. However, there is bound to be opposition from intellectual property

owners and people engaging in creative industries, particularly so in Hong Kong because of its relatively unique situation. As many places around us are experts in producing copyright-infringing articles, it is particularly easy for such articles to be imported into Hong Kong as parallel imports and flood our market. This will definitely affect the entire trade.

Meanwhile, we have also heard the views expressed by the retail sector earlier, that if the importation of parallel imports is disallowed, the retail sector will have fewer cargo sources. Furthermore, all new products can only be obtained through agents or copyright owners. This would mean fewer goods and higher prices. Such disputes, having continued for a decade, are still going on. Today, I believe the Government seems to have heeded the advice because it has initially intended to shorten the criminal liability period from 18 months to nine months. Perhaps let me recap some history. Initially, that is, in 1997, there was no restriction at all. Later, a time limit was imposed by the Government. Importation of parallel imports within 18 months after the publication of a copyright work is deemed an act of infringement. However, it is not considered so if the importation takes place 18 months after. Therefore, whether an act is considered as infringement is determined by a time factor. The Government has originally intended to shorten the period from 18 months to nine months with a view to liberalizing the restriction. However, the Government's move is strongly opposed by people engaging in creative industries. Furthermore, there have been certain voices from agents. It appears that the Government has heeded these views and thus shortened the period from 18 months to 15 months. The Government has at least demonstrated its sincerity in liberalizing the restriction, only that its move has been impeded by the actual circumstances.

Can we say that people engaging in creative industries are over-worrying? My answer is not absolutely affirmative. However, the situation in our neighbours is indeed worrying, as pointed out by me earlier. Are those goods pirated or parallel imports? Sometimes, it might not be possible for a clear line to be drawn. Therefore, they might not be over-worrying. However, to a certain extent, it does reflect that creative industries in Hong Kong and our neighbours are not yet mature. In fact, it is evident that copyright is being liberalized progressively in many places. If liberalization goes too far all of a sudden, serious problems might arise, thus creating an opening for copyright-infringing products.

Hence, we in the Liberal Party find the 15-month period barely acceptable. However, as pointed out by Mr Vincent FANG earlier, it is not that we have no sympathy, as it is the unanimous hope of consumers and retailers that the Government can further consider this issue. Meanwhile, however, we have to look at our creative industries as well. Furthermore, in addition to the development of creative industries, the development of all commercial activities relating to creative industries is also important. This may take some time.

Deputy President, perhaps let me roughly say a few words about Ms Margaret NG's amendment. I have originally not intended to discuss this at this moment because we will speak in a more detailed manner on the amendment at the Committee stage. Nevertheless, I would like to say that we have some reservations about Ms NG's amendment. During our discussion with the trade, some professionals asked us to support Ms NG's amendment by all means. However, when the trade discussed the issue with us, many people asked us not to support the amendment because it might do harm despite its good intentions. We will later explain this at the Committee stage.

Deputy President, the last point I would like to make, which Members will not oppose too strongly, is that intellectual property rights should be wholly controlled by property owners. When someone creates a piece of work or produce a piece of work for his own possession, we would be unjustified in saying that we as society can deal with his work in the way we like and deprive him of his say. This is a basic principle. However, to a certain extent, I also agree with Ms Margaret NG who said earlier that, in view of social and technological developments and the free flow of information, our needs in various areas mean that a balance must, to a certain extent, be struck insofar as this basic principle is concerned. Notwithstanding this, we in the Liberal Party uphold the overriding principle that intellectual property rights should continue to be possessed by intellectual property owners. This overriding principle is also the prerequisite. Therefore, we cannot say as the majority of people in society or a certain political power think that they have the right to use these intellectual property works, they should be allowed to do so. The matter should not be simply be determined by the majority for the sake of depriving someone of his property rights. Actually, this is a matter of principle.

It is a great pity that, today, the concept of intellectual property rights in Hong Kong is still not deeply rooted in people's mind. Actually, for the

ordinary people, it is absolutely clear if a certain property is an actual substance because an actual substance belongs to its owner. However, the actual component of intellectual property represents merely part of the intellectual property rights, or a small fraction of its value. On the contrary, its abstract component, that is, all the efforts involved, its fruit of creation, and the core of the actual substance are actually the result of enormous amounts of abstract effort and, very often, painstaking effort. These values are not known to the ordinary people and consumers. Or they might not want to accept that these values represent a lion's share.

In a recent incident I have cited before, a photographer was requested to provide his photos free for exhibition purposes. After the exhibition, the persons in charge of the exhibition requested the photographer to give away his photos so that they could deal with the photos at their own discretion. This shows that they do not understand that intellectual property rights have absolutely nothing to do with the photos. Instead, intellectual property rights are inside the photos. However, the general public do not have a clear idea of this concept, not to mention an even more complex notion of law. We found this a daunting task whenever we discussed this topic.

I hope that the Government can address this problem squarely. Society as a whole will not cherish intellectual property rights if society does not understand what it is meant by intellectual property rights or property right. Neither will society protect intellectual property rights. It will only stand on the opposite side as a rival to intellectual property creators or owners with interest as its starting point, instead of thinking that every one of us must make adequate efforts to protect creative industries and those talented people, or enable them to develop and give play to their talents.

Hence, I hope the Government will step up its effort in education and stop thinking that the problem can be resolved simply by publishing some articles appealing to the public to cherish intellectual property rights. Instead, it must consider clearly how to make everyone in society to have a true understanding of the concept of intellectual property rights, which is not easily comprehensible.

Thank you, Deputy President.

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

MR ALBERT CHAN (in Cantonese): Deputy President, although I did not join the Bills Committee on this Bill, I fully support the spirit and principles of the whole Bill.

Deputy President, I am recently handling a complaint case about suspected plagiarism or fraud in an academic institution, which has something to do with this Bill in terms of coverage. This issue shows that the Ordinance still has certain inadequacies, so I wish to take the opportunity presented by the Second Reading of the Bill to offer my observations and opinion for the reference of the Secretary. Certainly, my opinion may not immediately deal with the existing inadequacies of the Ordinance, but given that this is an important law on the protection of intellectual property rights, my opinion will nonetheless serve as valuable reference.

Deputy President, the importance of intellectual property rights does not lie solely in its commercial value. However, it is very obvious that the thrust of the Bill today is pretty commercial. Certainly, it is equally important that the importance of commercial value and creativity is necessarily directly related to the investment and reward of creative work, as well as the respect for creators. Hence, there is no doubt that this principle should be upheld.

While it is important to protect the benefits and respect brought to creators by their creations, if there is no provision in the ordinance concerned to pinpoint or penalize suspected acts of plagiarism or fraud by creators, then intellectual property rights merely protect the interests of creators. If the work of a creator can still be made public even under the suspicion of plagiarism or fraud, and is not subject to any sanction, this will, to a certain extent, give an impression that the ordinance or legislation concerned has loopholes. This may even be translated into an accusation of enabling others to seek benefits by fraud under its connivance or consent.

In fact, fraud involving magazines or press reports is regulated by other relevant ordinances. However, from my recent enquiries, it appears that no mechanism is in place to deal with plagiarism or fraud relating to books or academic researches. After some students of the Hong Kong Baptist University (HKBU) discovered and complained that there were serious problems with certain research literature of the School of Chinese Medicine reported by an international publication, which involve the reproduction of data or suspected plagiarism or fraud in the article, the authoritative academic publication

concerned has recently released an open statement to retract the article concerned.

As we all understand, it is very rare for an authoritative academic publication to retract an article. An article is retracted only if it has committed fraud or is fraught with some serious problems in ethics or academic research. Before a research paper is published in any authoritative publication, it will necessarily undergo the process of careful examination and selection. It is therefore a very serious incident in the academic circle for an article to be eventually retracted upon complaint and investigation, and it may be a very big scandal for certain academic institutions in Hong Kong.

Nonetheless, this incident did not seem to have sent any ripples in Hong Kong. Earlier, there was a press report on this matter. But, what is most surprising and disturbing is that, on completion of an internal investigation, the academic institution concerned considered that there was not any problem with the article. The article or research paper concerned was suspected of plagiarism and fraud, but why did the local university concerned say that there was not any problem after investigation? Why would the authoritative publication concerned have retracted the article if there was no problem with it? Are we using different yardsticks and applying different standards?

As evident in the above case, Secretary, what mechanism has been put in place in Hong Kong to deal with these problems? Should there be a penalty mechanism to deal with fraud academic research or product if intellectual property rights must be protected and respected? None at all, right? For instance, if we bought a book and discovered that the information in it was false, there is nothing we can do other than take civil action, right? Newspapers or magazines committing fraud will be punished by the media or news organizations in the end. Yet, the price of a book is not low, which may cost over \$100. So, if it contains false information..... A few years ago, I bought a book written by a reputed person, but I do not want to disclose his name here. Thereafter, I bought some other books and discovered that 80% of his book was copied from some mainland reference books, and nearly 90% of the mainland articles which he quoted could be found in another book.

In that case, publications involving fraud or non-genuine research results even fail to compare with a can of mud carp in terms of protection. While a can of mud carp may cost only a few dollars each, the ingredients and materials

contained therein have been fully set out. They are also subject to the regulation of the relevant labelling law. A book that we bought containing false information, however, is not subject to any penalty provision.

What is even more worrying is that, it seems that there is no mechanism to handle this kind of complaint. This morning, I asked Secretary Prof Arthur LI how these problems could be addressed. These academic institutions have paid up to hundreds of thousand dollars or even millions of dollars in remuneration a year to employ academics to do researches, but it appears that no specific authority has been set up to deal with research results suspected of plagiarism or fraud — except that internal investigations would be conducted by the academic institutions themselves. Even if the person-in-charge or president of a certain university deliberately withheld some evidence of guilt or facts for the purpose of upholding its reputation, there will not be any authority to deal with the situation. In most cases, they involved the use of public funds and may even end up a disgrace of Hong Kong. And yet, no mechanism has been put in place to tackle this problem in Hong Kong. Although this Ordinance deals with copyright problems and respect for intellectual property rights, there is no penalty provision to deal with disrespect for intellectual property rights by committing fraud.

After considering the HKBU incident, I opine that in case amendments have to be made to this Ordinance in future, consideration should be given to whether or not these factors have to be taken into account. I consider that respect for intellectual property rights does not simply lie in commercial interests and the reward and respect that was being brought to the creators, it should also target at people disrespecting intellectual property rights. Should they seek personal benefits out of intellectual property rights, there should be penalty provisions to deal with such dishonesty or fraud to make this Ordinance better balanced.

Thank you, Deputy President.

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

MR ALBERT CHENG (in Cantonese): The protection of intellectual property rights has now become trendy, like environmental protection. The so-called intellectual property rights..... One can surely earn people's respect just by

using the term "protection" for I think no one will admit to disrespecting intellectual property rights. Nonetheless, as Members may recall (I have forgotten if it was said by Chairman MAO), there were times when intellectual property rights were regarded as a means employed by the capitalist societies to deprive poor people who live in those backward Third World countries of their right to know.

Let us look back on our history as there is currently a trend for collective memory. In the '50s and '60s, when I was still studying aircraft engineering, people did not have much money for buying reference books. In Hong Kong, this kind of reference books was only available in one of Swindon's book stores. But still, I could not afford them. What did we do then? We could only turn to Taiwan by asking pilots or colleagues to buy the pirated books for us there. I wonder if Members seated here have benefited from those pirated books from Taiwan. This is how we studied in those days when we did not have much money. In those years, there were many red, green or yellow pirated discs available for sale in Temple Street. Perhaps many of our composers today have benefited from these so-called pirated discs, which had inspired their creativity and made them musical masters today.

Therefore, a balance must be struck in respect of intellectual property rights. Nowadays, even the World Health Organization considers that the owners of certain intellectual property right, such as HIV/AIDS medicine, are making sinister profits, and has therefore permitted some backward countries to produce non-patent medicines on their own. This is the true fact. I am speaking on intellectual property rights in my capacity as the Chairman of the Panel on Information Technology and Broadcasting. Of course, it cannot be said that I have no respect for intellectual property rights as this will be pretty contradictory.

We must look at one thing. I am also a member of this Bills Committee, but I was so lazy that I seldom attended its meetings. However, the real reason is not that I was lazy, but soon after attending a few meetings, I discovered that all members were speaking for the trade. I was singled out. Even my brothers in the pro-democracy camp also said that the freedom of speech and intellectual property rights should be respected. They had been successfully persuaded by the trade. Why do I say that? I am very dissatisfied that the Government..... In fact, the Government should be praised this time for shortening the period of criminal liability for parallel imports from 18 months to nine months. And yet,

I still consider this inadequate. However, the interest of consumers was not represented in the Bills Committee. The period of criminal liability has now changed to 15 months, as opposed to the originally proposed 12 months. While I did not accept the proposed change to 12 months, it has been changed to 15 months. I would rather maintain the *status quo*. What is the difference between 15 and 18 months?

Turning to parallel goods, I have no idea why it infringes intellectual property rights. Parallel goods are copyright works for which royalties have been fully paid. Sale is not available in Hong Kong..... many books are not on sale in Hong Kong. Even for movies, some were not shown here. Even if there is any movie or drama series that I wish to watch, for instance, I may not be able to buy them from either HMV or other large-scale chain stores though I am ready to pay up to a few hundred dollars for them. Nonetheless, some people are able to buy them in Shenzhen. So, why do we not allow the importation of these parallel goods? How do parallel goods infringe copyright? This is something which I cannot understand. I therefore find that there is a problem with this Bill. The fact is my colleagues in the Bills Committee have endorsed the Bill and the whole Bills Committee has been successfully persuaded by the trade. This explains why I am so infuriated whenever the issue of parallel goods is mentioned. I have no idea how parallel goods relate to intellectual property rights.

Just as someone has said, probably Mr Ronny TONG — I said "probably" and an elucidation can be made as this is permitted according to the Rules of Procedure — he had talked to some comic books producers and considered that the nine-month criminal liability period was too short for them to obtain copyrights for the Taiwan comics and do the necessary translation work. I then asked Mr Ronny TONG: Who will read comic books that have been overdue for nine months? Do you understand this point? Will anyone read comic books that have been overdue for nine months? This is just an example and I do not intend to offend Mr Ronny TONG. Members all know that he and I are good friends.....

(Mr Ronny TONG rose to request elucidation)

DEPUTY PRESIDENT (in Cantonese): Do you wish to seek an elucidation from Mr CHENG, or do you wish to make an elucidation yourself?

MR RONNY TONG (in Cantonese): I clarify that his remarks are incorrect.

DEPUTY PRESIDENT (in Cantonese): Are you seeking an elucidation on the remarks made by him?

MR RONNY TONG (in Cantonese): I am seeking an elucidation from him.

DEPUTY PRESIDENT (in Cantonese): Or do you wish to make an elucidation yourself? Mr Albert CHENG, are you willing to make an elucidation?

MR ALBERT CHENG (in Cantonese): I have nothing to elucidate. I have no idea of what to elucidate.

DEPUTY PRESIDENT (in Cantonese): Mr Ronny TONG, what elucidation are you seeking from Mr Albert CHENG?

MR RONNY TONG (in Cantonese): Deputy President, the remarks that he just made concerning my speech were incorrect. There is no reason for him to wrongly accuse me by putting words that I have never said into my mouth.

DEPUTY PRESIDENT (in Cantonese): Would you like to have an opportunity to elucidate what you have said later on? Would you like to have this opportunity?

MR RONNY TONG (in Cantonese): Yes, sure.

DEPUTY PRESIDENT (in Cantonese): So, let Mr CHENG finish his speech first.

MR RONNY TONG (in Cantonese): OK.

DEPUTY PRESIDENT (in Cantonese): Mr CHENG, please go on with your speech.

MR ALBERT CHENG (in Cantonese): I should not have mentioned Mr Ronny TONG's name, and I may withdraw that remark as we are buddies. A highly esteemed Member, who is also a member of the Bills Committee, said he had been persuaded that, insofar as Japanese comic books imported from Taiwan are concerned, a nine-month criminal liability period is not long enough. I engage in the publishing business. Not only am I an experienced publisher, I used to be the Chairman of the Hong Kong Publishers and Distributors Association. The Taiwanese have to fly to Japan to acquire the copyright of comics and then translate them into Chinese. The Member who tried to lobby on behalf of the trade said that as a result of the failure of Hong Kong people to acquire the necessary copyrights in Japan, parallel goods have to be imported from Taiwan for sale in Hong Kong.

Certainly, I do not think that restriction should be imposed on parallel goods. In response to the Government's proposal to shorten the period from 18 months to nine months, I asked: Who would read comics that have been overdue for nine months? I really cannot tell. I really do not know, neither do I understand why anyone would want to read comic books that have been overdue for nine months. It is possible because when patronizing a hair salon, we may sometimes read *Old Master Q*, comic books that were published more than a decade ago. Yet, we did not buy them. We merely flipped through them to kill time.

Therefore, I express my deep regret over this Bill. During the deliberations on the Bill, no one — this is my personal view — has ever considered the interests of consumers and their rights to know, except the interest of the trade. Consumers are not protected at all. Therefore, I only wish to stress one point — parallel goods do not constitute infringement, they are copyright goods. There is this point I can never understand. Rather, I think that the Government had already taken into consideration the interests of consumers and was very eager to shorten the relevant period from 18 months to nine months. In fact, it was the original intention of the Government to further shorten the period to six months, but it believed that there would definitely be serious repercussions when the Bill was introduced. In order to lobby support from Legislative Council Members, the Government had reasonably proposed to

shorten the period to nine months, which was nonetheless subsequently changed to 15 months.

Due to this reason, I object to the Second Reading of this Bill. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Mr Ronny TONG, do you wish to elucidate your own speech?

MR RONNY TONG (in Cantonese): Deputy President, I originally did not intend to speak, but I think that Mr Albert CHENG has some misunderstanding about the need of the copyright law.

Firstly, the remarks that he claimed to be quoted of me earlier were not made by me. I simply recounted the views of publishers who lobbied me, and they do not in any way represent my personal view. But I do share similar opinions, but they are formed on different grounds.

In fact, it was the original intent of the copyright law to provide ultimate protection for art creators, so as to enable them to continue with their creative work. Art creations cover words, paintings, movies and music, where music, in particular, currently enjoys pretty great freedom for creativity.

How can we achieve a balance then? While we must ensure that the creators are able to receive reasonable rewards for their creative work on the one hand, the interests of consumers must also be given weight on the other. Yet, consumers do not enjoy absolute interests. The reasoning is pretty simple because if consumers enjoy absolute legal protection, this will leave the creators no room for survival. The consumers will suffer in the end as they can no longer enjoy the creative work produced by these creators. Comics in Hong Kong belong to the latter case.

As far as I understand it, their concern is, whatever the reason, they are unable to survive in the end. If they are unable to survive, consumers will suffer in the end regardless of how much interest they enjoy or how powerful they are, because they can no longer benefit from or even look at any creative work. Therefore, we must not kill the goose that lays golden eggs, thinking that it is desirable to get the golden egg.

Certainly, different publishing companies, publishers or creators will have different views and respective arguments, which may not be agreed by other people. Yet, the final decision lies in the industry itself. First, in the case of Hong Kong, do they have a part to play in making contribution? Second, do they really encounter some actual difficulties? Will the industry simply disappear as a result of a lack of protection in law? I consider that they are important factors to be considered in the enactment of law, rather than merely saying that parallel importation is beneficial to consumers only. We do not agree with the remarks made by the publishers as they are merely sweeping the problem under the carpet.

Deputy President, this is all I want to say.

DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak? Mr Albert CHENG, is it a point of order?

MR ALBERT CHENG (in Cantonese): Can I elucidate the speech of Mr Ronny TONG?

DEPUTY PRESIDENT (in Cantonese): Do you wish to elucidate the part of your speech that he has misunderstood?

MR ALBERT CHENG (in Cantonese): No, I wish to have a debate. Can I have a debate with him?

DEPUTY PRESIDENT (in Cantonese): You may elucidate the part of your speech that he has misunderstood.

MR ALBERT CHENG (in Cantonese): No, I think that the question is the part which Mr Ronny TONG has misunderstood is.....

DEPUTY PRESIDENT (in Cantonese): Did he misunderstand your words?

MR ALBERT CHENG (in Cantonese): He said that parallel importation..... The parallel importation that I referred to does not have any direct relation with creations. Taiwan imports parallel goods.....

DEPUTY PRESIDENT (in Cantonese): Mr Albert CHENG, you are not elucidating the part of your speech that has been misunderstood by him. You only need to state the part of your speech that has been misunderstood.

MR ALBERT CHENG (in Cantonese): He has misunderstood the relation between parallel goods and creation. Parallel goods and creation..... How can translated comic books be regarded as creations?

DEPUTY PRESIDENT (in Cantonese): This is already a debate. Mr Albert CHENG, you are starting a debate with him. He has not misunderstood your speech.

MR ALBERT CHENG (in Cantonese): Can I speak again then?

DEPUTY PRESIDENT (in Cantonese): You cannot speak again, please be seated.

MR ALBERT CHENG (in Cantonese): Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Deputy President, first of all, I sincerely thank the Chairman of the Bills Committee on Copyright (Amendment) Bill 2006, Mr SIN Chung-kai, as well as other members of the Bills Committee, and I also thank other Members for their speeches earlier.

The Copyright (Amendment) Bill 2006 (the Bill) was first proposed for Second Reading in March 2006. Over the past year or so, the Bills Committee held 24 meetings to conduct detailed and in-depth discussions on the Bill, and it has given us many valuable opinions. We are indebted to the Chairman and members of the Bills Committee for their support and co-operation which enabled us to resume the Second Reading of the Bill in this legislative year.

(THE PRESIDENT resumed the Chair)

Here, I also wish to thank the relevant organizations of copyright owners and users. In the course of examining these legislative amendments, these organizations had actively expressed their opinions which enabled us to gain a thorough understanding of the operation and concerns of the relevant sectors, as well as users' aspiration for reasonable and fair use of copyright works.

During the scrutiny of the Bill, the Bills Committee had held public hearings and received over 100 submissions. During the discussion of the Bills Committee, copyright owners and users often held completely different positions. An example is the question of whether or not a time limit should be set for parallel imports as mentioned by many Members earlier, no consensus has been reached over the past decade as to how long the time limit should be. I think it is still not easy to obtain majority support for this proposal now and so, it is not easy at all to forge a consensus and strike a balance. After repeated discussions and revisions, and after the Bills Committee has carefully balanced the interests of copyright owners and users, we have come up with a set of Committee stage amendments (CSAs). I understand that individual organizations and Members and even myself may not be very happy with some of the proposed clauses or we may still take exception to them, but I believe we all agree that the Bill and the whole set of CSAs before us today have not come by easily. I do not hope that we would refrain from making legislation promptly only in the hope that a better proposal can be worked out. I trust that

this proposal, which has not come by easily, is in line with the overall interests of society and that it is a well-balanced proposal capable of obtaining support from a majority of Members at the present stage.

This amendment exercise is enormously significant. It is an important milestone in the review of the Copyright Ordinance in recent years. Amendments are proposed mainly in four areas: First, the Bill contains a full range of proposals to enhance copyright protection in Hong Kong, which is conducive to the development of a knowledge-based economy and creative industries in Hong Kong. After the enactment of the Bill, the Copyright Ordinance in Hong Kong will be in full compliance with the Internet Treaties of the World Intellectual Property Organization. Second, the Bill will give greater flexibility in our copyright exemption regime to better accommodate users' need for reasonable use of copyright works and facilitate education and the dissemination of information. Third, the Bill has appropriately responded to the community's aspiration for free circulation of parallel imported copies of copyright work. I will further elaborate this point later. Fourth, the Bill will strengthen enforcement against copyright offences.

President, I will focus on the key points of the Bill, including some issues that have been repeatedly discussed, and explain the Government's policy and position, and I will also give an overall response to the concerns expressed by Members and the organizations concerned.

First of all, in respect of copyright protection, as mentioned by Ms Audrey EU earlier on, the Bill in effect serves to formally incorporate into the Copyright Ordinance the suspension arrangements relating to the criminal liability of business end-users for possessing an infringing copy in the Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance). It means that the criminal provision applies only to four categories of works, namely, computer programs, movies, television dramas and musical recordings.

This amendment can be dated back to 2001. After this criminal provision officially came into effect, there was widespread public concern that the circulation of information and classroom teaching would be significantly affected if the criminal provision would cover all types of copyright works. In this connection, the Legislative Council enacted the Suspension Ordinance to temporarily limit the scope of criminal liability to these four categories of works. It was proposed that arrangements would be made in the long term pending the completion of consultation and review by the Government.

After extensive consultation and discussion over the years, we consider it appropriate to maintain the existing scope of criminal liability to cover only the four categories of works. During past discussions, book publishers repeatedly proposed that the scope of criminal liability should also cover copyright works in the form of books but since the contents of books are mostly related to dissemination of information and knowledge, if the possession of an infringing copy of a book or magazine in business may constitute a criminal offence, this may be against the community's aspiration for the circulation of information and dissemination of knowledge. We, therefore, did not take on board the proposal put forward by book publishers.

The publishing industry said that significant infringing acts of copying or distributing printed works in business would greatly affect the development of the industry. To address the concern of the industry, the Bill proposed the new business end-user copying/distribution criminal liability, which applies to four types of printed works, namely, newspapers, magazines, periodicals and books.

During the scrutiny of the Bill by the Bills Committee, some user organizations were concerned that the new criminal liability would affect daily business operation and impede the dissemination of information. Ms Margaret NG has also spoken on this point earlier on. I must point out that the new criminal liability does not criminalize all acts of copying or distribution, for it aims to combat only regular or frequent infringing acts in business which will cause financial losses to copyright owners. Meanwhile, to address users' concern over the dissemination of information, the Bill introduced the concept of "safe harbour", which means that criminal liability does not apply to infringing activities within the numeric limits of the "safe harbour".

Ms Audrey EU and Ms Margaret NG expressed concern earlier about the possible impact of the proposed criminal liability on the operation of the legal profession. I wish to point out that under section 54 of the existing Copyright Ordinance, acts done for the purposes of judicial proceedings will not infringe copyright, and this exemption is provided to facilitate the conduct of judicial proceedings. I believe this exemption already covers most of the needs of the legal profession for the use of copyright works.

However, business end-users who need to make copies of the four types of printed works on a frequent or regular basis for distribution or distribute copies of these four types of printed works should acquire appropriate licences from the copyright owners. At present, the relevant authorizing agency has introduced

certain licensing schemes for application by users. I wish to take this opportunity to once again urge the authorizing agency to conclude suitable, user-friendly licensing arrangements with user groups. The Government is most willing to play a part in co-ordinating their discussion where necessary.

After the proposed criminal liability provision is endorsed, we will immediately proceed to the making of regulations on "safe harbour". When we first proposed this criminal liability at the end of 2005, we also proposed preliminary numeric limits of the "safe harbour", but the copyright owners concerned considered the proposed thresholds too lax. On the other hand, business users were concerned about the incorporation into the scope of criminal liability of copying/distribution activities for the purpose of dissemination of information in business which do not constitute significant infringement. We will try to strike a proper balance between them as far as possible when making regulations on "safe harbour".

Moreover, we also noticed the great difference between certain means of distribution, such as the difference between distribution by Intranet and the conventional means of distribution of physical copies, and so, it is necessary to make special arrangements in determining the numeric limits of "safe harbour" for these distribution platforms. Meanwhile, with regard to these means of distribution, as they may still be excluded from the licensing schemes, the extension of the scope of criminal liability to cover these distribution activities may cause users to bring these activities to a complete halt in order not to become criminally liable given the difficulty in acquiring licenses, and this would subsequently affect the dissemination of information. In this connection, we will provide by way of regulations that the new offence is not applicable to certain distribution platforms until the two problems are resolved.

In its submission to the Bills Committee, the book publishing industry still expressed concern about the exclusion of educational establishments which are non-profit-making or subvented by the Government from the new criminal liability and proposed that textbooks and other teaching materials be excluded from the scope of exemption. We consider that the proposal of the industry will, in effect, prevent these educational establishments from enjoying the exemption. To ensure that the proposed offence will not hamper classroom teaching, we cannot accept this proposal. However, I wish to take this opportunity to emphasize that the proposed exemption will target the new criminal liability only, and educational establishments will still be civilly or even

criminally liable under the existing Copyright Ordinance if they engage in infringing activities.

I am very glad to tell Members that with the Government's active co-ordination, non-profit-making primary and secondary schools already signed a new copying licensing agreement with book copyright owners last year. We will continue to encourage the industry and educational establishments to address the demand for limited copying of copyright works through the licensing arrangements.

In respect of enhancing copyright protection, another important and, as far as I understand it, very controversial proposal in the Bill is the introduction of "director/partner criminal liability" in respect of piracy by business end-users. The objective of this proposal is to promote corporate accountability and responsible governance, with a view to preventing piracy in business.

When this proposal was examined in the Bills Committee, some members were concerned that the burden of proof would be shifted to the defendant, which they considered too draconian. Here, I wish to reiterate that the burden of proof placed on the defendant is only an evidential burden which can be discharged if the defendant can adduce sufficient evidence to raise an issue that he has not authorized the infringing act in question.

Besides, some members proposed that we should enable directors or partners to know more clearly what preventive measures they can take to avoid criminal liability. To address their concern, we will propose CSAs to the effect that if the defendant can adduce evidence to prove that he has made arrangements to set aside financial resources and direct the use of such resources, or incur expenditure, for acquisition of a sufficient number of genuine copies of the copyright work concerned or appropriate licences, then the defendant will be regarded as having adduced sufficient evidence and the burden of proof on him will hence be discharged. In other words, the prosecution has to produce evidence to prove beyond reasonable doubt that the directors and partners have authorized the infringing act by the company in order for the defendant to be convicted.

When discussing the relevant clauses, members of the Bills Committee, especially Mr Andrew LEUNG, Mrs Selina CHOW and Mr WONG Ting-kwong, had repeatedly stressed the importance of publicity among small

and medium enterprises (SMEs) on the scope of criminal liability and its impact on them. They called on the Government to draw up guidelines to assist the business sector in formulating measures to avoid violating the criminal liabilities for business end-users, so as to prevent directors and partners from falling foul of the law unwittingly. We entirely share their view on the importance of this area of work, and we thank the Bills Committee for providing valuable input to us. After the provisions are endorsed, we will launch extensive publicity campaigns on the scope of the new criminal liability and its effect, and step up promotion of the measures to prevent piracy by business end-users in the business community, especially among SMEs, including how to ensure the use of genuine software in business, before proposing the commencement dates of the provisions.

To provide support for copyright owners to develop digital sales channels, the Bill has provided for a new civil liability for circumvention of technological measures and for making and dealing in circumvention tools, and also introduced criminal sanction for certain activities of a business nature.

In drafting these anti-circumvention provisions, we must enhance the protection of digital copyright on the one hand and ensure that the provisions would not cause obstruction to the reasonable use of copyright works by users or stifle technological development on the other. Therefore, while we have introduced new legal liabilities, we have at the same time duly provided for exceptions in respect of these provisions.

I wish to emphasize that users should not circumvent technological measures used to protect copyright. The new anti-circumvention provisions will more comprehensively and effectively combat circumvention activities, with a view to protecting copyright. The inclusion of exceptions aims only to ensure that certain reasonable and lawful activities, such as research into cryptography and the use of parallel imports of copyright works, will not be subject to the anti-circumvention provisions. The provisions on the exceptions have been drafted with care to prevent abuse.

Moreover, when the relevant provisions were examined by the Bills Committee, various representative organizations had put forward many opinions. After repeated discussions and negotiations, we will propose a number of CSAs to enable the relevant provisions to operate more effectively without compromising users' legitimate access to copyright works.

One of the amendments is to respond to the strong demand of the industries by delinking the intention of infringement of copyright on the part of the circumventor from the civil liability for anti-circumvention acts under section 273A and the civil liability for making and dealing in circumvention tools or providing circumvention services under section 273B. This amendment is proposed having regard to such factors as technological development, the latest development of digital sales channels in the industries and enormous resource injection by the industries for developing technological measures to protect copyright.

To ensure that users will not be affected by the anti-circumvention provisions when carrying out "permitted acts" under the Copyright Ordinance, we will propose CSAs to the effect that civil liability will not apply if the act of circumvention of technological measures used to protect copyright is done by "specified libraries" under the Copyright Ordinance for the sole purpose of carrying out permitted acts relating to archival or preservation of works under sections 50, 51 and 53 of the Copyright Ordinance.

When scrutinizing the relevant clauses, the Bills Committee was concerned that the scope of "specified libraries" might cover some profit-making private libraries. I wish to point out that the Secretary for Commerce, Industry and Technology, or the future Secretary for Commerce and Economic Development, is empowered under section 46 of the existing Copyright Ordinance to specify, by notice in the Gazette, libraries and archives for the "permitted acts" in sections 47 to 53 of the Copyright Ordinance. Before publication of the notice, our legislative intent is that the libraries to which the existing Copyright (Libraries) Regulations apply should be able to carry out the "permitted acts" in the Ordinance during the transitional period. For this reason, these libraries should also be included in the new scope of exemption in respect of acts of anti-circumvention. We will embark on a separate legislative exercise to specify the scope of "specified libraries and archives", and in the context of that exercise, review if the libraries under the Copyright (Libraries) Regulations are still appropriate in present-day circumstances.

If the anti-circumvention provisions are endorsed, we will expeditiously start drawing up the first list of exceptions according to the mechanism in section 273H before the anti-circumvention provisions come into operation. Before drawing up the list, we must and will certainly consult the public and copyright owner organizations extensively, in order to ensure that the proposals are

reasonable and that they have addressed the concerns of various sectors as far as possible.

I understand that some copyright owners are concerned about possible abuse of the mechanism for drawing up exceptions or delays which would continuously put off the commencement of the anti-circumvention provisions. In this connection, I wish to emphasize that the Government will definitely embark on all the relevant work expeditiously and we will try our best to submit to the Legislative Council the Government's first list of proposed exceptions within 15 months after the enactment of the Bill.

With regard to the new exemption provisions relating to civil and criminal liabilities arising from circumvention, I would like to briefly report two amendments:

1. To facilitate users' access to parallel imported copies of copyright works, the original section 273F(11) proposed in the Bill stipulated that if a technological measure contains regional coding or other technological measures for the purpose of controlling market segmentation on a geographical basis, then the criminal provisions against commercial dealings of circumvention devices or services will not apply. In view of the concern of some copyright owners that the coverage of this provision is too broad, we propose to amend the coverage to the effect that the exemption will only apply to circumvention devices or services the sole purpose of which is to overcome technological measures for controlling market segmentation on a geographical basis. For example, commercial dealings of modified computer game consoles which enable users to play pirated or parallel-imported copies of computer games or provision of such modification service in business may constitute criminal liability.
2. The original section 273F(12) in the Bill provides exemption for technological measures which prohibit users from recording a broadcast or a cable programme for the purpose of enabling the programmes to be viewed at a more convenient time, or for time-shifting purposes, from the criminal provisions against commercial dealings of circumvention devices or services. In the course of scrutiny of the relevant clause by the Bills Committee, the

broadcasting industry said that it has become common for the same technological measure to be used in relation to copyright works delivered over different media platforms due to technological convergence, and the exemption provided in section 273F(12) will allow certain circumvention devices capable of hacking technological measures used to protect many types of copyright works to be put up for sale in the market. In view of the current operation of the industry, section 273F(12) may give rise to problems in actual implementation. Considering that the existing practice in the industry already provides for appropriate arrangements to allow the recording of a broadcast or a cable programme for private time-shifting purposes, we propose to delete this exemption provision. If, in future, the interest of users in recording television programmes for private time-shifting purposes is jeopardized and if the industry failed to provide on its own initiative appropriate arrangement to respond to the aspiration of users, we will consider providing exception through the mechanism in section 273H.

Another proposal which aims to enhance copyright protection is the introduction of rental rights for copyright owners of films and comic books, so that they can levy royalties from commercial rental of films and comic books.

When examining the relevant clauses in the Bills Committee, members were concerned about whether the proposal would cover some non-commercial rental activities. I must point out that our legislative intent is to cover commercial rental activities only. The clauses were drafted carefully to ensure that they serve this legislative intent.

Besides, the comic book industry pointed out that some shops have provided comic books for customers to read in the shops subject to payment of a fee and that the exclusion of this type of commercial activity from the scope of rental right will create loopholes in the legislation which will in effect encourage existing comic book rental shops to switch to this *modus operandi* in their operation. After consideration, we will propose a CSA to include this type of commercial rental activities into the scope of rental rights.

Here, I wish to once again urge copyright owners to expeditiously discuss with rental shops the rental licensing arrangements, so that these shops can

continue to operate lawfully after the provision becomes effective while copyright owners can obtain a reasonable return from the rental activities. The Government will take up a co-ordinating role in their discussion where necessary. We will set the commencement date of the provisions on rental right depending on the progress of discussion.

On the improvement of the existing copyright exemption regime, copyright owners are concerned that the fair dealing provision for education may be misunderstood or abused to the detriment of the interest of copyright owners. They are particularly concerned about the application of the exemption in the Intranet environment of educational establishments.

Although we do not agree that the fair dealing provision will provide exemption for those abuses alleged by copyright owners, we appreciate their concern because compared with the distribution of physical copies, electronic distribution will have greater potential impact. To encourage educational establishments to properly manage their copyright materials on line, we will propose the relevant CSAs later. In addition, we will launch publicity and public education activities after the enactment of the Bill to explain in detail to the education sector and students the scope of application of the provision as well as the related issues and draw up suitable guidelines to help them understand the scope of exemption more easily.

One of the most controversial proposals under the Bill is liberalization of parallel imports. Originally, the Bill made two proposals: (1) to exempt business end-users from civil and criminal liability for importing or possessing parallel-imported works under specified circumstances; (2) to shorten the criminal liability period for parallel imports from the existing 18 months to nine months.

In this regard, the Bills Committee has received many opposing views. On the one hand, copyright owners strongly demanded that the *status quo* be maintained, arguing that liberalization of parallel importation would seriously impact on local works and result in unemployment. On the other hand, users of copyright works, including consumer organizations, demanded liberalization of parallel imports which will facilitate free circulation of goods and enable more choices of copyright works at a less expensive price in the market.

Here, I must point out that Hong Kong is the freest market economy in the world. It has been an established policy of the SAR Government to ensure free

flow of goods, with the long-term objective of fully liberalizing the use of parallel imports of copyright works. However, as we move forward in this direction, the community should not lose sight of the possible impact of liberalization on the development of creative industries. Many creative industries, including the movie industry, still rely on the practice of different pricing in different territories, in order to recover the cost of their investment for further investment in new works.

I have listened very carefully to the speech made by Mr Vincent FANG earlier and certainly, I have also listened very carefully to the speech of Mrs Selina CHOW. In this connection, I have felt even more strongly that views are indeed diverse in different sectors insofar as parallel importation is concerned. Here, I wish to reiterate that we will continuously work for the objective of fully liberalizing the use of parallel imports of copyright works, but I am sorry that I cannot make any concrete undertaking at this stage as to when it will be further liberalized. This is, after all, a very controversial issue, and a consensus between the Legislative Council and the community as a whole is required before liberalization can be taken forward. So, at this stage, after considering the views of the Bills Committee and the conclusions of many rounds of discussion with the organizations concerned, we propose to amend the liability period for parallel imports to 15 months. This is still one step taken towards full liberalization, though only a very small step in my view. As regards the use of parallel imports by general business end-users, educational establishments and libraries, the original proposals on liberalization in the Bill will be maintained.

When examining the provisions relating to parallel importation, the Bills Committee was concerned that while the Copyright Ordinance has provided for civil and even criminal liability for commercial dealings of parallel imported copies of copyright works, the requirement of proof seemed to be too high and this has often made proceedings or prosecution difficult. Copyright owners have also strongly urged the Government to address this problem. In view of this, we will propose CSAs to include new clauses, so as to facilitate law enforcement against commercial dealings of parallel imported copies of copyright works.

Under the existing Copyright Ordinance, a parallel-imported copy of copyright work is an infringing copy by virtue of section 35(3) which was lawfully made in the place where the copy was made. As to whether a copy was lawfully made in the place of manufacture, it has always been our position

that this would depend on whether or not the copy was made with the consent of the copyright owner in that place, and in the place where the copy was made, there must be law protecting copyright or the copyright in the work has not expired.

The Law Society of Hong Kong (Law Society) held a different view on the interpretation of "lawfully made". It considers that "lawfully made" should be limited to copies made with the authorization of the Hong Kong copyright owner. In other words, if a copyright work has different copyright owners in overseas countries and Hong Kong, according to the proposal of Law Society, the copies made overseas with the authorization of the overseas copyright owner will be defined as pirated copies. This proposal is not in line with our established position. We consider that these copies made with the authorization of overseas copyright owner are still lawfully-made copies and even though the Hong Kong copyright owner does not own the copyright overseas, the copies should not be considered as pirated copies, and our position is also in line with the international practice. When discussing the relevant clauses in the Bills Committee, members were aware of the fundamental difference between our position and the interpretation of Law Society. To ensure clarity of the provision, we will move a CSA to include the definition of "lawfully made" in the Copyright Ordinance, in order to expressly state our established position.

Furthermore, Law Society has expressed concern about the definition of "lawfully made" proposed by the Government. Law Society was concerned that in cases involving piracy activities, this definition would create a loophole for the defendant to take advantage of by making a false claim that the copies were lawfully-made imported copies and are therefore not pirated copies, thus making it more difficult for the prosecution to provide evidence and hence undermining the effectiveness of measures taken by Hong Kong copyright owners against piracy activities. Law Society proposed to include a clause to enable the copyright owner or his representative at the place where the copy made to produce evidence by stating in an affidavit that the copy was not lawfully made, and no further proof would be required. Under this proposed clause, the burden of proof will be shifted to the defendant. We do not agree that the proposed definition would lead to the problem as cautioned by Law Society, and we also have great doubts about the actual effects of the proposed affidavit provision. We have submitted a written response to the Bills Committee to explain our reasons in detail. I understand that Ms Margaret NG will move CSAs later to include the affidavit provision. The Government's position is that

we oppose the amendments. I will explain the Government's views and reasons for opposition when the amendments are proposed for discussion later.

I wish to emphasize that the Government will continuously make the utmost effort to combat piracy activities and we will keep a close watch on enforcement. Should any operational and enforcement difficulty arise in future, we will definitely consult the organizations concerned and review whether measures should be proposed to facilitate enforcement.

I understand that Mr Albert CHAN earlier on cited many cases about the use of trickery, and he questioned why there could not be more draconian, punitive provisions against copyright infringement. Due to the time constraint, and as I have not been able to obtain more comprehensive information, I cannot give a detailed response now, although I sometimes think that the use of trickery often suggests creativity and may not necessarily constitute copyright infringement. What I am discussing now is mainly legislation on copyright infringement and under certain circumstances, copyright infringement may constitute criminal liability. Of course, general infringement of copyright in books will constitute civil liability only, but as to whether such acts should also be subject to criminal liability, I think it will be very controversial.

President, I wish to offer my apology for spending a very long time explaining the Bill and the CSAs that I am going to propose later. This precisely shows that the Bill has a very extensive coverage and many proposals actually involve very complicated details. I believe that through the enactment of the Bill, the copyright protection regime in Hong Kong will be elevated to a new platform and the international position of Hong Kong in the protection of intellectual property rights will be consolidated, which will generate immediate and even long-term interests for the development of society and economy of Hong Kong. In the meantime, from what I have said earlier, Members may have noted that before the commencement of many provisions, we will continue to hold discussions with the organizations concerned and Members of the Legislative Council, in order to draw up the relevant details. We will also launch a series of publicity and education activities to ensure that before any of the provisions takes effect, the industrial and commercial sectors, especially the SMEs and even members of the general public, are fully aware of the impact of each of these provisions, including the impact of buying anything, on their daily business operation and daily lives.

As many Members mentioned earlier, which I also very much agree, with the assistance of the team of our quality, professional civil servants, the Government was able to accomplish this very important, most momentous and very difficult task in collaboration with the organizations concerned and Members. This is very important indeed. In fact, as I will be leaving the Government soon, this is indeed a great honour and I feel most gratified. I sincerely hope that Members will vote for the Bill and the amendments to be proposed by the Government.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Copyright (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.

(Members raised their hands)

PRESIDENT (in Cantonese): I think the question is.....

Mr Albert CHENG rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHENG 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, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert CHENG voted against the motion.

THE PRESIDENT, MRS RITA FAN, did not cast any vote.

THE PRESIDENT announced that there were 49 Members present, 47 were in favour of the motion and one 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): Copyright (Amendment) Bill 2006.

Council went into Committee.

Committee Stage

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

COPYRIGHT (AMENDMENT) BILL 2006

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

CLERK (in Cantonese): Clauses 1, 6, 9, 10, 21, 23, 25, 26, 28, 29, 30, 33, 36, 38 to 43, 46, 54, 58, 59, 60, 62, 63 and 64.

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 clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 to 5, 7, 8, 11 to 20, 22, 24, 27, 31, 32, 34, 35, 37, 44, 45, 47 to 53, 55, 56, 57 and 61.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move the deletion of clauses 14 and 50, and the amendments to the other clauses read out just now, as set out in the paper circularized to Members. These amendments have been examined in detail by the Bills Committee and I will only explain some of the major amendments in brief.

With regard to the criminal liability of business end-users for copying or distribution of infringing copies of copyright works, the amendment to clause 24 seeks to, among other things, improve the proposed section 119B(1), in order to more clearly reflect our policy and that is, it may constitute a criminal offence to

make for distribution or to distribute infringing copies of copyright works published in the four types of printed works on a regular or frequent basis in business resulting in financial loss to the copyright owners, disregarding whether or not the infringing act was done in respect of the same copyright work.

With regard to the criminal liability of directors and partners, clauses 22(4) and 24 are amended to exempt the defendant from the burden of proof if he can adduce evidence to prove that he has already made certain specified arrangements in the company. I have explained in detail the policy considerations and the salient points of the amendments during the resumption of the Second Reading debate, so I am not going to repeat them.

Concerning the amendments to clause 56 relating to the anti-circumvention provisions, I only wish to mention the major proposals. First, the proposed sections 273A(1) and 273B(1) are amended to delink the relevant civil liability from the circumventor's intention or otherwise to carry out activities to infringe copyright.

Second, the amendment to the proposed section 273B(1) seeks to introduce civil liability for distributing circumvention devices in a non-business context to such extent that the owner of the copyright will be affected prejudicially. This amendment aims to respond to the concern of copyright owners that this type of distribution may still cause substantive prejudice to their interest, despite the fact that it is not of a business nature.

Third, a number of amendments are made to the proposed sections 273D to 273F relating to exemption from civil and criminal liability for circumvention activities, including the two major amendments which I explained during the resumed Second Reading debate concerning sections 273F(11) and (12), as well as a number of technical amendments to enable the provisions to be put into practice more effectively.

Fourth, the proposed 273H is amended to empower the Secretary for Commerce and Economic Development to provide exceptions in respect of the proposed sections 273A to 273C if he is satisfied that the use of a copyright work is very likely to be adversely affected as a result of the application of the anti-circumvention provisions and that such use does not constitute an infringement of copyright. This amendment will enable us to draw up the first list of exceptions before section 273A comes into effect and allow greater flexibility in enforcing the provision.

Next, I would like to speak on the amendments relating to parallel imports of copyright works. The amendment to clause 7(2) serves to amend the liability period of parallel imports from nine months as proposed in the Bill to 15 months. We also proposed to amend clauses 35, 44 and 45, in order to provide definitions of copies of copyright works or fixation of performances lawfully made in a country, territory or area, with a view to clearly expressing our legislative intent and dispelling further doubts that organizations or individuals may have. I have explained in detail the considerations and proposals relating to these two areas of amendment during the resumed Second Reading debate and I will not repeat the points here.

Finally, I would like to talk about measures taken to facilitate enforcement against commercial dealing of parallel imported copies of copyright work. At present, prosecution against parallel imported copies of copyright works requires evidence to prove firstly, whether the copies are imported into Hong Kong; and secondly, if the copies are made in Hong Kong, it would constitute an infringement of copyright. Focusing on these two elements, we have proposed the following amendments to facilitate enforcement: First, clause 7 is amended to include a presumption that any optical disc which does not bear a licensed manufacturer's code, and a copy of copyright work containing a label or mark restricting sales of the copy to places outside Hong Kong or indicating that the copy was made outside Hong Kong, will be presumed to be an imported copy. The proposed presumption will only put an evidential burden on the defendant. Second, clause 27(4) is amended to include a new provision to allow copyright owners to prove by way of an affidavit an infringement of copyright if the copy was made in Hong Kong.

This measure will alleviate the burden on copyright owners, especially overseas copyright owners, of having to give evidence in Court in respect of these cases. These amendments have the support of the Bills Committee and so, I hope Members will support them.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex I)

Clause 3 (see Annex I)

Clause 4 (see Annex I)

Clause 5 (see Annex I)

Clause 7 (see Annex I)

Clause 8 (see Annex I)

Clause 11 (see Annex I)

Clause 12 (see Annex I)

Clause 13 (see Annex I)

Clause 14 (see Annex I)

Clause 15 (see Annex I)

Clause 16 (see Annex I)

Clause 17 (see Annex I)

Clause 18 (see Annex I)

Clause 19 (see Annex I)

Clause 20 (see Annex I)

Clause 22 (see Annex I)

Clause 24 (see Annex I)

Clause 27 (see Annex I)

Clause 31 (see Annex I)

Clause 32 (see Annex I)

Clause 34 (see Annex I)

Clause 35 (see Annex I)

Clause 37 (see Annex I)

Clause 44 (see Annex I)

Clause 45 (see Annex I)

Clause 47 (see Annex I)

Clause 48 (see Annex I)

Clause 49 (see Annex I)

Clause 50 (see Annex I)

Clause 51 (see Annex I)

Clause 52 (see Annex I)

Clause 53 (see Annex I)

Clause 55 (see Annex I)

Clause 56 (see Annex I)

Clause 57 (see Annex I)

Clause 61 (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 Commerce, Industry and Technology 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.

CHAIRMAN (in Cantonese): As the amendments to clauses 14 and 50, which deal with deletion, have been passed, clauses 14 and 50 are deleted from the Bill.

CLERK (in Cantonese): Clauses 3, 4, 5, 7, 8, 11, 12, 13, 15 to 20, 22, 24, 31, 32, 34, 35, 37, 44, 45, 47, 48, 49, 51, 52, 53, 55, 56, 57 and 61 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Ms Margaret NG, you may move your amendments.

MS MARGARET NG: Madam Chairman, I move further amendments to clauses 2 and 27 of the Copyright (Amendment) Bill 2006 (the Bill). The

substantive amendment is to clause 27(5) which adds a new subsection (2D) to section 121 of the Ordinance. The rest are consequential to this amendment.

It is a small but necessary amendment urged upon us by The Law Society of Hong Kong (the Law Society) in the submissions to the Bills Committee. It provides for Hong Kong and overseas owners to adduce evidence by affidavit that they did not authorize an alleged infringing copy of the copyright work. Once the affidavit or affidavits have been made, an evidential burden is placed on the defendant. He will have to adduce evidence that the copy of the work was made with proper authorization.

It is important to emphasize, and the Administration agrees with us, that there is no breach of the presumption of innocence. The affidavit of the copyright owner merely goes to the weight of the evidence against the defendant, which the defendant can easily displace if the copy is authorized.

This amendment is made necessary by the liberalization of parallel import under the Bill, in which "parallel import" is defined as goods lawfully made in the place where it was made. So where there is a split copyright ownership, even though the Hong Kong copyright owner did not authorize the making of the goods, it may still be authorized goods and lawfully sold in Hong Kong. From the practical point of view, the question is, how can he protect his right against a pirated copy? The Government says he usually relies on internal evidence, namely, comparing certain features of the alleged infringing copy or pirated copy with the authentic goods. But why should the taxpayer go into the expense of doing so when there is a simpler method of proof? More important still, why should the success or failure of the charge depend on how clever the pirated copy is? Does it mean that the law can only tackle crude forgeries but not sophisticated ones?

Moreover, with the whole regime of parallel import, there must be stronger consumer protection, and a stronger sense of responsibility to respect copyright. The importer should ensure that the place of origin of the copyright goods he sells is clearly ascertained, and that there is proper warranty that its making was authorized in that place. Such a system is simple and practical. It protects the consumer and the distributor. Whenever a question arises as to whether the goods were authorized, the importer can easily produce the warranty, and if the warranty was itself fraudulently given, he will always have recourse to the law and compensation. This is what we should like to see in Hong Kong.

It ensures respect for copyright while at the same time gives greater choice to the consumer.

Apart from the practical reason, there is also a reason of principle. The law must give real protection where it recognizes rights. If ownership of the Hong Kong copyright is recognized, then it must count for something. We do not go so far as the Law Society in holding that "lawfully made" goods must refer to goods authorized by the Hong Kong copyright owner. The Hong Kong copyright owner must have a standing in the law which is better than the non-owner, he must be placed in a better position with respect to pirated goods.

Madam Chairman, I should just explain, in case there is any misunderstanding, that under the proposed subsection (2D)(c)(ii), it is not suggested that the Hong Kong copyright owner can depose to the fact that no other person entitled to copyright has authorized the making of the goods. One can make an affidavit only as to what is within one's own personal knowledge, and I am sure the Law Society fully appreciates that. Proposed subsection (2D)(c)(ii) provides for other affidavits from other copyright owners to be made where appropriate. Thank you.

Proposed amendments

Clause 2 (see Annex I)

Clause 27 (see Annex I)

MRS SELINA CHOW (in Cantonese): Chairman, I wish to briefly present the Liberal Party's view on Ms Margaret NG's amendment. As far as I understand it, this very technical amendment actually seeks to empower copyright owners to state in an affidavit whether a commodity is an infringing product. This is actually related to the so-called concept of "lawfully made" because, although there is no direct reference to parallel imports, an enormous amount of parallel imports is involved. Most of these commodities are very probably manufactured in places outside Hong Kong for shipment to Hong Kong afterwards. As it is known to all, the existing legislation can reflect the existing policy. Should this amendment be passed, a time restriction will be imposed. In other words, parallel imports imported within 18 months are considered as infringing products. However, parallel imports will no longer be treated as infringing products after 18

months. It is now proposed that the period be shortened to 15 months. Under the existing policy on parallel imports, whether or not parallel imports are considered infringing products is established in this manner.

However, according to the present proposal, copyright owners may state in an affidavit that a commodity is not manufactured with authorization. In other words, it was made without authorization in places outside the territory and therefore it should be considered as an infringing product. To start with, it is against our principle to use time to establish whether a commodity is an infringing product. This is point number one. Secondly, insofar as copyright owners are concerned, the industry has once reflected to us that, from the legal point of view, copyright owners should be given such rights. During our discussion with the industry on this, people in the trade did not consider this arrangement necessary. In their opinion, the existing practice whereby expert witnesses will usually be invited by the Customs and Excise Department to prove a product in question is an infringing product is already very reliable. They were concerned that, if the so-called affidavit arrangement is provided for in legislation, they (whether they are licensees, that is, authorized persons or copyright owners) would often be required to submit an affidavit to Court. This would, on the contrary, make the matter even more complicated. Furthermore, the entire process would be inconvenienced by, for instance, the time factor.

Therefore, the Liberal Party cannot support this amendment. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Ms Margaret NG, do you wish to speak again?

MS MARGARET NG (in Cantonese): Chairman, I will give Mrs Selina CHOW a very brief response.

This amendment actually seeks to give copyright owners more protection. In reply to our enquiry, the authorities said that this was unnecessary. We can actually tell from some features of the commodities that they are genuine or faked or they are counterfeit or genuine parallel imports. This is very simple. If it is known that both copyright owners in and outside Hong Kong have not authorized the manufacture of a certain commodity, then we can draw on a

presumption. If a commodity was manufactured without authorization, how can it be proved to be genuine? If an imported commodity is genuine, the importer is simply required to state where the commodity was manufactured and whether he was authorized to manufacture the commodity. Could the matter not be settled in this manner?

This is as simple as that. I believe the industry mentioned by Mrs Selina CHOW has not consulted their legal advisor. Why do they not fight for more protection in their own interest? For instance, it is very easy for retailers to do so. As I already stated in my speech just now, if there is no parallel import, a person who possesses copyright here can then make the authorization. However, the situation will become quite complicated with the existence of parallel imports, for both genuine parallel imports and counterfeit goods can be found. It is for these reasons that we propose to simplify the matter by way of an affidavit.

Interestingly, Mrs Selina CHOW was concerned that the matter would become even more complicated as a result. And yet, just now Mr LI Kwok-ying said that this approach was too simple and would be easily abused. Actually, Members do not need to guess. They might as well consult their own lawyers, who should have engaged in copyright work for years. I believe their advice will not be deceiving.

Chairman, it will be a great pity that if Members really decide not to support the amendment for these reasons, for taxpayers will be required to pay more money and copyright owners will receive less protection. I hope Members can look at the amendment again carefully. The amendment is certainly technical in nature. It comes from the legal profession which has professional understanding of such laws. I hope Members can consider it.

Thank you, Chairman.

MRS SELINA CHOW (in Cantonese): I just wish to tell Ms Margaret NG that the industry was absolutely aware of what it was meant by more legal protection when it was being consulted. Hence, I think that Ms NG seemed to suggest that they knew nothing at all when she said the industry did not possess the knowledge, and that they did not support the amendment precisely because they had no legal knowledge. What is wrong with offering them more protection?

Lawyers will certainly think that, by doing so, people in the industry will enjoy more protection, and they are merely required to make a bit more effort. However, they hold that what they are offered is not what they need. Furthermore, they think that they have been adequately protected. Including the relevant requirement in the legislation will, on the contrary, lead to the possibility that they will be requested by Court or defendants to do something extra, and they might be required to pay more lawyers' fees as a result. I believe the industry knows very well whether the so-called extra protection offered is necessary or not.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Secretary for Commerce, Industry and Technology, do you wish to speak?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, the Government does not agree with Ms NG's amendment.

First of all, I wish to point out that we have all along considered whether the affidavit provision should be introduced or not. The purpose of the affidavit provision is to facilitate the making of a statement by the deponent on behalf of the copyright owner. The statement made in the affidavit will be admissible as evidence in the relevant legal proceedings if the specified requirements as set out under section 121 of the existing Copyright Ordinance are met.

As also stated in the past judgements made by the Court of Final Appeal, this provision will impose an evidential burden on the defendant, requiring the defendant to adduce evidence to raise a doubt on the authenticity of the statement made in the affidavit, in order to overthrow the presumed authenticity of the statement. Under the existing Copyright Ordinance, we do allow the use of affidavit as proof of copyright subsistence and ownership.

We also propose in the Bill to allow the use of an affidavit as proof that the defendant has not acquired a licence from the copyright owner for conducting the law-breaching acts of making and dealing in infringing copies under section 118 of the Ordinance, or in cases of parallel imports, as proof of copyright

infringement if the copies involved were made in Hong Kong. We introduced these provisions mainly in the light of enforcement or operational problems from past experiences of actual enforcement. It is, therefore, necessary to include a new affidavit provision to help address the problems.

We do not agree with Ms Margaret NG's amendment mainly because we take exception to the view that the definition of "lawfully made" proposed by the Government will lead to the practical enforcement difficulties over which Ms NG and The Law Society of Hong Kong (Law Society) are concerned.

Moreover, we have great misgivings about whether the proposed affidavit provision will practically serve any useful purpose. Firstly, from the practical point of view, the proposed definition of "lawfully made" aims to spell out the Government's legislative intent. It does not introduce any new policy; nor will it affect the protection currently provided by the Copyright Ordinance to copyright owners. We have not encountered the sort of problems raised by Ms NG or Law Society in our past enforcement actions in relation to pirated copies.

In previous cases involving pirated copies, the examiners, or "expert witnesses" mentioned by Mrs Selina CHOW earlier, would submit evidence to show that the characteristics of the copies in question differed from those of genuine copies and were therefore pirated copies. The Court would generally accept the expert evidence given by examiners. As a matter of fact, split copyright ownership in different geographical locations rarely occurs. With global copyright ownership, copyright owners have control over their licensees and understand well the features of the parallel-imported products. The examiners acting on behalf of copyright owners could also tell if a certain product is pirated or not.

On the other hand, even in the absence of the affidavit provision, if the defendant claimed that the copy in question was lawfully made in the place of manufacture, he would have to adduce evidence to prove it. He cannot simply make such a claim without adducing any credible evidence. If he has already adduced the evidence to raise an issue that the copy in question was lawfully made, any evidential burden imposed by the affidavit provision would already have been discharged. Insofar as we are aware, no other country, territory or area has such a facilitation provision.

For these reasons, the Government does not support this amendment. We hope that Members will oppose the amendment proposed by Ms Margaret NG. As I said during the resumed Second Reading debate, the Government has undertaken to keep a close watch on enforcement. We will consult the relevant organizations on any practical problem that may arise in future and review whether measures should be introduced to facilitate enforcement, including conducting studies on the appropriateness of introducing an affidavit provision and other effective measures. I wish to add that my response certainly has the agreement of colleagues responsible for legal matters in our Bureau. Thank you, Madam Chairman.

MS MARGARET NG (in Cantonese): Chairman, the earlier response of the Secretary has been influenced, to a certain extent, by some of the views raised by The Law Society of Hong Kong (Law Society) earlier. I have briefly mentioned, during the resumed Second Reading debate, that Law Society has taken this position because of its view that "lawfully made" parallel imports should refer to parallel imports made with the authorization of the Hong Kong copyright owner, whereas affidavit evidence is merely one of the components.

Chairman, I have made it very clear earlier that the Civic Party does not agree with Law Society that genuine parallel imports must be products manufactured locally with the authorization of the Hong Kong copyright owner. Actually, this question does not exist anymore. We have merely proposed a measure facilitating enforcement. As pointed out unequivocally by the Secretary, the most important reason for objection raised by the Department is that it is unnecessary to do so because there is another way to differentiate between genuine parallel imports and counterfeit goods. Insofar as the relevant procedure is concerned, experts will be responsible for examining and verifying the relevant features. However, everyone knows that the procedure will, firstly, incur exorbitant fees and, secondly, be time-consuming. Against this background, the Department will amend section 121 so that affidavit evidence can be accepted. It is also for this reason that we propose the use of affidavit evidence. If the matter can be resolved simply by an affidavit, we will be able to save money while protecting the rights of copyright owners.

Chairman, I therefore think that the Government's opposition stand might very probably have been influenced by some factors unrelated to my amendment. Actually, this amendment should be adopted even if we purely look at what

should be done to make it easier to save more money and facilitate enforcement. I hope Honourable colleagues in this Council will support my amendment because it will bring benefits only. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, I now put the question to you and that is: That the amendments moved by Ms Margaret NG be passed. 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 Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG 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.

Functional Constituencies:

Ms Margaret NG, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendments.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendments.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEUNG Kwok-hung and Mr Ronny TONG voted for the amendments.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr CHEUNG Hok-ming voted against the amendments.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the amendments and 20 against them; while among the Members returned by geographical constituencies through direct elections, 20 were present, 10 were in favour of the amendments and nine against them. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negatived.

CLERK (in Cantonese): Clauses 2 and 27 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 2 and 27 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 2A	Long title amended
New clause 2B	Duration of copyright in literary, dramatic, musical or artistic works
New clause 16A	Legislative Council and judicial proceedings
New clause 16B	Use of typeface in ordinary course of printing
New clause 18A	Right to be identified as author or director
New clause 18B	Requirement that right be asserted
New clause 18C	Exceptions to right
New clause 18D	Right to object to derogatory treatment of work
New clause 20A	Application of provisions to joint works
New clause 20B	Transmission of moral rights on death

New clause 34A	Folklore, etc.: anonymous unpublished works
New clause 34B	Meaning of "publication" and "commercial publication"
New clause 34C	Requirement of signature: application in relation to body corporate
New clause 46A	Expressions having same meaning as in copyright provisions
New clause 51A	Legislative Council and judicial proceedings
New clause 60A	Schedule 1A added.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move that the new clauses read out just now, as set out in the paper circularized to Members, be read the Second time.

The Copyright (Amendment) Bill 2006 has introduced various new proposals and as the long title of the ordinance needs to be updated, the new clause 2A is proposed to make the relevant amendments.

The fair dealing provisions made for education and the provisions on exemption from civil liability arising from the act of circumvention for research into cryptography are both applicable to specified course of study. The definition of specified course of study includes a course of study developed on the basis of curriculum guidelines issued or endorsed by the Curriculum Development Council as in new schedule 1A. Schedule 1A now reads: Curriculum Development Council the members of which are appointed by the Chief Executive. In the event of change of name of the Curriculum Development Council or change in the mechanism for curriculum development,

the future Secretary for Commerce and Economic Development may amend the schedule by notice published in the Gazette.

Other new clauses are all technical amendments. I hope that Members will support these clauses and their Second Reading.

CHAIRMAN (in Cantonese): I now proposed the question to you and that is: That the new clauses read out just now be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 2A, 2B, 16A, 16B, 18A, 18B, 18C, 18D, 20A, 20B, 34A, 34B, 34C, 46A, 51A and 60A.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Chairman, I move that the new clauses read out just now be added to the Bill.

Proposed additions

New clause 2A (see Annex I)

New clause 2B (see Annex I)

New clause 16A (see Annex I)

New clause 16B (see Annex I)

New clause 18A (see Annex I)

New clause 18B (see Annex I)

New clause 18C (see Annex I)

New clause 18D (see Annex I)

New clause 20A (see Annex I)

New clause 20B (see Annex I)

New clause 34A (see Annex I)

New clause 34B (see Annex I)

New clause 34C (see Annex I)

New clause 46A (see Annex I)

New clause 51A (see Annex I)

New clause 60A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now 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.

COPYRIGHT (AMENDMENT) BILL 2006

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

Copyright (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 Copyright (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): Copyright (Amendment) Bill 2006.

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Tsing Sha Control Area Bill.

TSING SHA CONTROL AREA BILL

Resumption of debate on Second Reading which was moved on 18 April 2007

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

MR LAU KONG-WAH (in Cantonese): Madam President, I will speak later in my capacity as the Chairman of the Bills Committee on the highlights of the deliberations made. However, as this may be the last occasion on which Secretary Dr Sarah LIAO will speak in this Council, I would like to make use of this opportunity to thank her for the contribution made in transport, especially her great efforts and hard work in reducing the fares of the two railway corporations. I hope that the matter would come to some fruitful conclusion at the end of this year. I also wish the Secretary all the best in whatever endeavour she may pursue in future.

Madam President, Route 8 is a strategic road linking Sha Tin and North Lantau. The western section of Route 8 is the Tsing Ma Control Area (TMCA) linking Tsing Yi and North Lantau, which came into operation in 1997. The construction of Route 8 between Tsing Yi and Sha Tin is underway and will be commissioned in stages by the end of 2007 or early 2008. For effective and efficient traffic control and incident management, the section of Route 8 between Tsing Yi and Sha Tin will form one single control area — the Tsing Sha Control Area (TSCA).

As in the TMCA, the management, operation and maintenance of the TSCA will be outsourced to an operator through open tender. The main object of the Bill is to provide a legal basis for the management, operation and maintenance of the TSCA and traffic control in the TSCA. This is similar to the arrangement for the TMCA and other government tunnels.

In the course of deliberations, the Bills Committee has examined whether provisions be made so that the authorities may terminate the management agreement with the operator in case of default by the operator, in order to safeguard the interests of the Government and the public.

The Administration advises that the management agreement to be entered into with the operator in future will set out in detail the operator's duties and obligations in respect of the management, operation and maintenance of the TSCA. The Government is entitled to unilaterally terminating the agreement if the operator has failed to duly and punctually perform any of its obligations and duties under the agreement. The relevant terms of the management agreement would appropriately safeguard the interests of the Government and the public in general, as well as ensure satisfactory performance by the operator. Given the extensiveness of the relevant provisions of the management agreement, the Administration considers that it would not be appropriate to provide for the same in the Bill.

The Bills Committee has also examined the safeguards to prevent possible abuse of powers by persons employed by the operator or other authorized officers in the discharge of their duties. The Administration points out that under clause 11(1), any order, direction, requirement or instruction so given or made by an authorized officer in the TSCA must be exercised in a fair and reasonable manner, and must be related to the management, operation or

maintenance of the TSCA or control, restriction and safety of traffic in the TSCA. As such, it should not give rise to any possible abuse of powers by authorized officers.

The Bills Committee is concerned about the determination of tunnel tolls. The Administration advises that the section of Route 8 between Cheung Sha Wan and Tsing Yi will not be tolled as vehicles can leave Route 8 through the slip roads at West Kowloon, and its major alternative routes are toll free. However, the section between Sha Tin and Cheung Sha Wan will be tolled. This is in line with the current practice at other major alternative routes, that is, Lion Rock Tunnel, Shing Mun Tunnel and Tate's Cairn Tunnel. The Bills Committee notes that clause 26(1) of the Bill empowers the Chief Executive in Council to make regulations for the purpose of prescribing and providing for the payment of tolls and other fees and charges. Upon the enactment of the Bill, the Administration will consult the Panel on Transport, and introduce the relevant subsidiary legislation into the Legislative Council for negative vetting.

Madam President, with respect to amendments, the authorities will move an amendment of a technical nature. The amendment is related to the resolution passed on 14 June in this Council on the reorganization plan of the Government Secretariat. Pursuant to the reorganization plan, statutory functions exercisable by the Secretary for the Environment, Transport and Works on matters relating to transport will be transferred to the Secretary for Transport and Housing with effect from 1 July 2007. In view of this, the Administration will move Committee stage amendments to the Bill, in clause 1(2) and the definition of "Secretary" in clause 2(1), to amend references to "Secretary for the Environment, Transport and Works" to "Secretary for Transport and Housing".

The Bills Committee supports this amendment and this Bill. Thank you, Madam President.

MR ALBERT CHAN (in Cantonese): President, I have not joined this Bills Committee. However, when dealing with some problems lately, I found that there are some places in this Bill which should be addressed anew. As this is already the resumed Second Reading debate, it may not be that appropriate to propose any amendment. However, since new problems are found, they should be brought to Members' attention when they deal with the Bill.

The problems are mainly caused by the Tsing Ma Control Area (TMCA) and the Tsing Ma Control Area Ordinance. If Members are familiar with the TMCA, they will know that the TMCA occupies quite a large area in North Lantau. There is a village called Tso Wan to the south of the TMCA. The Tso Wan Village has existed for decades. There is a Tso Wan Path through which people can walk from next to the TMCA to the Tso Wan Village. Last Saturday, I made a site visit with some officers from a number of government departments.

Now the greatest problem with the relevant legislation is that it gives absolute powers to the organization concerned and tasks it with the management of the area concerned. Anyone would be strictly banned from going from the control area to another place. Last Saturday, I went there with some 10 villagers and representatives of government departments. If the villagers want to ride on a bus and get off at the TMCA and then walk from there to another place, they are prohibited from doing so.

We know that the TMCA and the future Tsing Sha Control Area (TSCA) have many places which may be favourite destinations for holiday makers. Most of the places in the TMCA are very close to the country park. But if people want to ride on a bus and get off at the TMCA and go to some nearby places for a hike in the hills or go fishing, they will be prohibited from doing so.

Recently, villagers of the Tso Wan Village had the experience of being stopped by the security guards of the TMCA as they wanted to walk to Tso Wan Village after getting off from a vehicle at the TMCA. In other words, there are people who cannot return to their homes because the law vests such absolute powers in respect of that control area. After making the site visit last Saturday, I am convinced that there had been negligence on the part of the Legislative Council when deliberations were made on the Bill at that time, because the rights of some villagers are not given enough attention.

I have just drafted a letter in the last couple of days and I hope to send it to the Commissioner of Transport, the Director of Highways and Sun Hung Kai in the hope that some reasonable administrative arrangements can be made before the relevant legislation is amended. They will prevent prohibiting people from using certain facilities or gaining access to certain places due to powers vested in respect of the control area.

The problem mentioned by me just now may not bear any direct relevance to the Tsing Sha Control Area Ordinance, but it is related to the powers vested by the Tsing Ma Control Area Ordinance and the fact that villagers are not able to return to their homes because of this kind of administrative control. This is in my opinion not to be accepted and permitted at all.

Members may not know much about Tso Wan Village. Now the only access to the Tso Wan Village is through the TMCA and then footpath. A few years ago, the place had a ferry service but due to operating losses, the ferry service was cancelled two years ago.

As the topic is brought up for discussion today, I hope the Secretary can look into the problem before she leaves the Government and see how the problem can be addressed right away. It is ridiculous to see how in a modern society like ours that the villagers cannot even go to their homes. What is even more ridiculous is that when deliberating on the Tsing Ma Control Area Bill, as many roads had to be realigned, the old Tso Wan Path was demolished and a new path was built in its place, but the new path is completely fenced off by barbed wire when it enters the TMCA. In other words, the path is built but no one can use it and get to the other side and, owing to restrictions of the TMCA, no entry is permitted.

This is no big deal, right? But it shows how people are affected because of some negligence and omission. It may be argued that not many people are affected, but if this matter is given attention, this would prevent harm from being done to a few as a result of development as a whole.

Another problem that needs to be addressed is that since such excellent road and bridge are built, the advantage of the place should be brought into full play. In the past it was very difficult to go to North Lantau and as people can now go there directly by the Tsing Ma Bridge, there is no reason why despite so many buses going to the TMCA, people are still barred from alighting there for a hike in the mountainside. This is totally unacceptable to me. It is because of such deficiencies in the relevant legislation that this kind of unhealthy and unreasonable state of affairs is allowed to exist lawfully.

I think in future when the need arises, the Government should conduct a fresh review of the law and make amendments as necessary to remove this kind of unreasonable and unfair state of affairs. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no Member wishes to speak, I now call upon the Secretary for the Environment, Transport and Works to speak in reply.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I wish to thank Mr LAU Kong-wah, Chairman of the Bills Committee on Tsing Sha Control Area Bill as well as members of the Bills Committee for having scrutinized the Bill in a most serious and efficient manner.

Route 8 is a strategic road linking Sha Tin and North Lantau. The western section of Route 8 is the Tsing Ma Control Area (TMCA) linking Tsing Yi and North Lantau, which came into operation in 1997. The remaining section of Route 8 between Tsing Yi and Sha Tin is under construction. This section is about 15 km in length, and comprises three road tunnels, a cable-stayed bridge across the Rambler Channel called the Stonecutters Bridge, four viaducts, as well as several interchanges and slip roads.

The construction of Route 8 between Tsing Yi and Sha Tin will be completed in stages. The section between Sha Tin and Cheung Sha Wan is scheduled to open in late 2007/early 2008, followed by the Nam Wan Tunnel and viaducts at Tsing Yi in late 2008 and the Stonecutters Bridge in mid-2009.

For effective and efficient traffic control and incident management, the section of Route 8 between Tsing Yi and Sha Tin will form one single control area — the Tsing Sha Control Area (TSCA). The management, operation and maintenance of the TSCA will be outsourced to an operator through open tender. This is similar to the arrangement for the TMCA. The ownership of the whole Route 8 will remain with the Government.

On completion, Route 8 in the TSCA will provide a direct road link between Chek Lap Kok and the Northeast New Territories via Tsing Yi and Cheung Sha Wan. It will also provide additional road capacity to cope with the increasing traffic along the Lion Rock Tunnel, Tate's Cairn Tunnel, Shing Mun

Tunnel, Cheung Tsing Highway, Cheung Tsing Tunnel and Tsing Kwai Highway.

Provisions in the Bill are largely similar to those of the Tsing Ma Control Area Ordinance. During deliberations in the Bills Committee, in response to questions raised by Members, detailed explanations were given on issues such as the determination of boundaries of the TSCA, closure of road in Control Area and financial penalties imposed on the operator, and so on. Members support the resumption of the Second Reading debate on the Bill.

With respect to the problem raised earlier by Mr Albert CHAN, as a matter of fact, it would pose a hazard to both pedestrians and drivers alike when people walk on an expressway in either the TSCA or the TMCA. Mr CHAN mentioned a path to a certain village and it is closed exactly because of this reason. I think the problem has to be studied with great care. As Mr CHAN has sent a letter to the Commissioner of Transport, I trust the case will be handled properly.

Pursuant to the reorganization plan of the Government Secretariat, statutory functions exercisable by the Secretary for the Environment, Transport and Works on matters relating to transport will be transferred to the Secretary for Transport and Housing with effect from 1 July 2007. This covers the statutory functions vested in the Secretary for the Environment, Transport and Works in the Bill. Therefore, I will move Committee stage amendments to the Bill to amend references to "Secretary for the Environment, Transport and Works" to "Secretary for Transport and Housing".

President, the Bill provides a legal basis for the management, operation and maintenance of the TSCA. I implore Members to support the Bill.

Thank you, President. I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Tsing Sha Control Area Bill 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): Tsing Sha Control Area Bill.

Council went into Committee.

Committee Stage

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

TSING SHA CONTROL AREA BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Tsing Sha Control Area Bill.

CLERK (in Cantonese): Clauses 3 to 31.

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 clauses 3 to 31 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1 and 2.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, I move the amendments to clauses 1 and 2 as set out in the paper circularized to Members.

In view of the reorganization of the Government Secretariat, the statutory functions exercisable by the Secretary for the Environment, Transport and Works on matters of transport will be transferred to the Secretary for Transport and Housing with effect from 1 July 2007. I therefore propose to amend clause 1(2) and the definition of "Secretary" in clause 2(1), and to amend references to "Secretary for the Environment, Transport and Works" to "Secretary for Transport and Housing". Thank you, Chairman.

Proposed amendments

Clause 1 (see Annex II)

Clause 2 (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 the Environment, Transport and Works 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 1 and 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLARK (in Cantonese): Schedule.

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 schedule stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority 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.

TSING SHA CONTROL AREA BILL

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

Tsing Sha Control Area Bill

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 Tsing Sha Control Area Bill 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): Tsing Sha Control Area Bill.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Interpretation and General Clauses Ordinance.

I now call upon the Secretary for Commerce, Industry and Technology to speak and move his motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I move that the resolution proposed by the Government under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1), as set out on the Agenda, be passed.

At its meeting on 23 May 2007, the Legislative Council passed the Import and Export (Amendment) Ordinance and the Unsolicited Electronic Messages Ordinance. The Secretary for Commerce, Industry and Technology is empowered by the relevant provisions of the respective Ordinance to appoint a commencement date for the Ordinance concerned by notice in the Gazette. In addition, the Unsolicited Electronic Messages Ordinance confers other powers on the Secretary for Commerce, Industry and Technology, including the making of regulations for the purposes of the Ordinance.

Pursuant to the reorganization of Policy Bureaux of the Government Secretariat, the duties and responsibilities of the Commerce, Industry and Technology Bureau will be transferred to the newly established Commerce and Economic Development Bureau with effect from 1 July 2007. On 14 June, the Legislative Council passed a resolution moved by the Secretary for Constitutional Affairs to transfer the statutory functions exercisable by existing Directors of Bureau to the Directors of the newly established Bureau from 1 July 2007. However, as the two Ordinances had not yet been gazetted when the Secretary for Constitutional Affairs notified the Legislative Council of the above resolution, the relevant provisions of the two Ordinances were not covered by the resolution moved by the Secretary for Constitutional Affairs.

For this reason, I now move a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) to change all references to the title of "Secretary for Commerce, Industry and Technology" in the above two Ordinances to "Secretary for Commerce and Economic Development" with effect from 1 July 2007, thereby allowing the new Secretary for Commerce and Economic Development to exercise the powers vested in and perform the functions set out in the two Ordinances from 1 July 2007. This resolution is technical in nature and will not involve substantive amendments to the statutory functions provided for in the Ordinances.

Because this is my last chance to speak before I leave office, please allow me to put the following on record. I wish to thank the President and each and every one of the Members of the Legislative Council, whether present or not, for your support and criticism over the years. Your support, criticism and advice have sharpened my wits and tamed my temper. While they have added all sorts of joys and sorrows to the journey of my life, they have also allowed me to witness a stage of my life that is abundant and, to me, has some meaning. Thank you, Madam President. Thank you, Members.

The Secretary for Commerce, Industry and Technology moved the following motion:

"RESOLVED that with effect from 1 July 2007 -

- (1) the functions exercisable by the Secretary for Commerce, Industry and Technology by virtue of -

- (a) the Import and Export (Amendment) Ordinance 2007 (8 of 2007) be transferred to the Secretary for Commerce and Economic Development and, for the purpose of giving full effect to such transfer, that Ordinance be amended in section 2 by repealing "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development";
 - (b) the Unsolicited Electronic Messages Ordinance (9 of 2007) be transferred to the Secretary for Commerce and Economic Development and, for the purpose of giving full effect to such transfer, that Ordinance be amended in the following provisions by repealing "Secretary for Commerce, Industry and Technology" wherever it appears and substituting "Secretary for Commerce and Economic Development" -
 - (i) section 1(3);
 - (ii) the definition of "Secretary" in section 2(1);
- (2) in addition to and without derogating from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) -
- (a) anything lawfully done before 1 July 2007 by or in relation to the Secretary for Commerce, Industry and Technology ("former Secretary") pursuant to or in connection with any function transferred under this Resolution shall on and from that date be regarded, in so far as necessary for the purpose or in consequence of that transfer, as done by or in relation to, as the case may be, the Secretary for Commerce and Economic Development ("new Secretary");
 - (b) anything that, immediately before 1 July 2007, may be done and is in the process of being done by or in relation to the former Secretary pursuant to or in

connection with any function transferred under this Resolution may on and from that date be continued by or in relation to, as the case may be, the new Secretary;

(c) anything that, immediately before 1 July 2007, is required to be done and is in the process of being done by or in relation to the former Secretary pursuant to or in connection with any function transferred under this Resolution shall on and from that date be continued by or in relation to, as the case may be, the new Secretary;

(d) without limiting subparagraphs (a), (b) and (c) -

(i) any document, agreement or arrangement creating or giving rise to legal rights or obligations that -

(A) refers to the former Secretary, or was prepared, made or entered into by the former Secretary on behalf of the Government; and

(B) is in force immediately before, or is to come into force on or after, 1 July 2007,

shall on and from that date be construed, in so far as necessary for the purpose or in consequence of the transfer of functions under this Resolution from the former Secretary to the new Secretary, as if the references to the former Secretary included references to the new Secretary;

(ii) any form that is specified or prescribed before 1 July 2007 for use in connection with any function of the former Secretary that is

transferred under this Resolution may on and from that date be used despite the fact that it contains references to the former Secretary, and those references shall be construed as references to the new Secretary."

(Members tapped on the bench to mark the occasion)

PRESIDENT (in Cantonese): I believe Members would like me to firstly, thank, on behalf of all of them, the Secretary for his contribution over the years to various motions tabled in the Legislative Council, and secondly, wish the Secretary all the best and happiness always.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Commerce, Industry and Technology 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 of the Members present. I declare the motion passed.

PRESIDENT (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2007 and the Poisons List (Amendment) (No. 3) Regulation 2007.

I now call upon the Secretary for Health, Welfare and Food to speak and move his motion.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that the motion under my name, as printed on the Agenda, be passed.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, dentist or a veterinary surgeon.

Arising from two applications for registration of pharmaceutical products, the Pharmacy and Poisons Board proposes to add two substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations. Pharmaceutical products containing any of these substances must then be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

We propose that the Amendment Regulations take immediate effect upon gazettal on 29 June 2007 to allow early control and sale of the relevant medicines.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under the Pharmacy and Poisons Ordinance to regulate pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

With these remarks, Madam President, I move the motion.

The Secretary for Health, Welfare and Food moved the following motion:

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 5 June 2007, be approved -

- (a) the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2007; and
- (b) the Poisons List (Amendment) (No. 3) Regulation 2007."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food 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 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 amend the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice.

I now call upon Mr James TO to speak and move his motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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

The motion relates to the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice. What is the purpose of the Notice? As a fundamental law has been enacted upon the passage of a bill on the Shenzhen Bay Port Hong Kong Port Area in this Council sometime ago, we have to deal with some subsidiary legislation to cope with various situations concerning traffic, safety or order. Among these is the Notice now proposed by the Government, which stipulates that specified persons are allowed to use the Closed Area under specific conditions. In other words, the use of the passages in the Closed Area by these persons in accordance with the conditions in a normal way will not constitute an illegal entrance to the Closed Area. These are the main points of the Notice.

Having discovered that some technical improvements are necessary to two areas when scrutinizing the Notice, I would like to move an amendment to perfect the Notice. First of all, I have to state that the purpose of the

amendment is not to obstruct the flow of people in the Shenzhen Bay Port Hong Kong Port Area. On the contrary, I welcome the establishment of the Port Area and hope that there will be a more convenient border crossing between China and Hong Kong as soon as possible so that the people can have a more convenient route to China.

Regarding the two technical amendments proposed by me, the first one is related to drivers. According to the Notice, the driver should stay at the immediate vicinity of the vehicle under all circumstances. This is a basic permission. Members may ask why there is a specification about the "immediate vicinity". When leaving the Port Area, the driver will go to the Ha Tsuen Interchange and will not be allowed to leave his vehicle as there is only a one road. Why is it specified that the driver should stay at the immediate vicinity instead of staying in the vehicle?

According to my understanding, if the vehicle has broken down, the driver would need to get out of the vehicle and change the tyre. This is natural and reasonable. If it is stipulated that the driver should stay in the vehicle, he will not be allowed to get out of the vehicle, right? If the vehicle has really broken down, the driver has to open the bonnet to check what is wrong. Is this not the proper reaction? As the driver has to leave his vehicle, it is necessary to stipulate the "immediate vicinity". But when an emergency has occurred, for instance, the vehicle has caught fire or an accident is going to happen and the driver should leave immediately for fear that his vehicle will become a dangerous premise, he cannot rigidly stay at the "immediate vicinity" of the vehicle. Will there be any reasonable excuse in law to allow the driver to defend himself? Because the driver may query whether he should stay at the immediate vicinity of the vehicle and be killed on seeing that his vehicle is going to explode. He may also query whether he can leave or not. The Government has explained that the law will be enforced wisely under such a situation and discretion will be exercised. Thus no prosecution will be initiated and the police should not be regarded as so unreasonable.

But we are now talking about the rule of law rather than the rule of man. If there is no reasonable excuse or legal justification provided in the legislation, a very strict interpretation may be adopted for these provisions. It may stipulate that the person concerned should leave the immediate vicinity in response to some emergencies and reasonable excuse, or legal justification should be laid down so that a defence is allowed in law. Of course, the defence of reasonable

excuse should be put up by the defendant instead of the prosecution in order to determine whether the justification is valid.

The second point I would like to raise is that according to the idea of the legislation as a whole at present, any person from the Mainland to the Hong Kong Port Area via this new control point will travel by vehicle to the Ha Tsuen Interchange. This is a one-way direction forward. Conversely, anyone from the Ha Tsuen Interchange to Hong Kong Port Area will travel to Shenzhen by vehicle from an opposite direction. These are two arrows of opposite directions.

In fact, however, there will be a situation where a person from the Mainland travels to Hong Kong Port Area via the Shenzhen control point. But suddenly due to some reason or an emergency, for instance, he is informed by a telephone call that a contract has not been properly signed and he has to turn back to sign it no matter what; or his family member has been hospitalized; or a matter which has been forgotten has suddenly come to his mind; or to put it simply, owing to various reasons, he does not want to travel to Ha Tsuen and then return to his original place from Ha Tsuen because the journey is meaningless. Instead, he wants to go back to the Mainland direct. According to the legislation, he is not allowed to do so. It is already an offence by staying in the Closed Area for a few seconds.

So, I cannot help but ask: Why is it necessary to specify this in law? It is because from the perspective of physics, the person concerned can do so in reality. Basically, he should have boarded a vehicle and left after coming out from the Immigration Department. Instead of doing so, however, he immediately goes back like any other travellers from Ha Tsuen via Hong Kong's Immigration Department and the check point of the Mainland. In practice, he can do so. However, he would have violated the law if he had done so. According to the Government, if the person has a special reason, for instance, his mother has suddenly passed away in the Mainland, he certainly has to go back immediately instead of travelling to Ha Tsuen before returning as the journey to Ha Tsuen is really meaningless and unnecessary. If he can provide such an explanation, he will not be prosecuted by the police. The Government has cited some other examples. For instance, some people heading for Sheung Shui by train have fallen into sleep and already arrived at Lo Wu on waking up. What should they do? As they do not intend to cross the boundary, they should return. Theoretically, they should report to the police that they have entered the

Closed Area but do not intend to cross the boundary. Situations like this are numerous as there are so many absent-minded people. The police will not initiate prosecution against them.

In my opinion, however, if a person who really has an intention to come to Hong Kong suddenly changes his mind and wants to go back to the Mainland, he can do so in practice. Why should he waste the travelling expenses on the trips to Ha Tsuen and return? This is unnecessary. During the course of discussion, the Government put forward an argument which, however, was not fully debated and it is the concern about smuggling activities.

I have also studied the situation in detail. However, I think if the person concerned really engages in smuggling activity and has to return immediately, he will need a contact person. What do I mean by a contact person? It means a person who has entered the Closed Area from Ha Tsuen. For instance, the smuggler wants to hand over some dutiable commodities to the contact person who will need to go to the Closed Area, meaning the Hong Kong Port Area, and return. In doing so, the contact person can save the travelling expenses on the trip after crossing the boundary for he can return immediately. In such a case, the contact person may be prosecuted on the evidence collected by the authorities after watching the whole process that he has not followed the arrow to go forward but returned after entering the Port Area. What charge will be pressed against this person? The charge will be an illegal stay in the Closed Area. Why? Because he has no intention to cross the boundary, right? So, even if the authorities have found that there is such a problem, it can be curbed.

Secondly, it has in fact stipulated that no one is allowed to bring in duty-free products to Hong Kong for a number of times within 24 hours. In other words, no one can avoid paying tax by such a means. Every day we can see that many people have violated the relevant legislation and been warned or fined. Such activity has existed for a long time. So, convenience should not be provided to certain people depending on some special circumstances. I think it is not proper. Hence, according to my second amendment, if a person, after crossing the boundary, suddenly realizes that he should go back to the Mainland, he needs not travel to Ha Tsuen by vehicle before crossing the boundary again. He should be regarded as an exception to the regulations of the Closed Area and allowed to stay in the permitted area under the Notice.

Regarding these two amendments, the Government has put forward the same argument. The Government admitted that we had been very meticulous in scrutinizing these provisions but maintained that technical matters could be dealt with by discretion to avoid unreasonableness. In my opinion, however, the law is the law. If we have observed some situations and it is possible for us to clarify them, then we should specify that a relevant act, which is an offence in law, will be dealt with as an offence and an act which is not an offence, will not be so regarded and a defence will be provided. Only in doing so can the spirit of the rule of law be reflected.

I move the technical amendments in the hope that the Notice can be perfected.

Mr James TO moved the following motion:

"RESOLVED that the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice, published in the Gazette as Legal Notice No. 75 of 2007 and laid on the table of the Legislative Council on 9 May 2007, be amended, in the Schedule —

(a) in column 3 of items 1(b), 2(a)(ii) and (b), 3(a)(ii) and (b) and 5, by adding "without reasonable excuse," after "leave" wherever it appears;

(b) by renumbering items 3, 4 and 5 as items 4, 5 and 6;

(c) by adding —

"3. Persons being in the Closed Area after entering Hong Kong via the Passenger Terminal Building, for the sole purpose of returning to Shenzhen.	The person shall leave the Closed Area without undue delay."."
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PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr James TO be passed.

MR LAU KONG-WAH (in Cantonese): Madam President, first of all, I would like to speak on the motion moved by Mr James TO in my capacity as Chairman of the Subcommittee.

At the House Committee meeting on 11 May this year, Members formed a Subcommittee to study the five pieces of subsidiary legislation on the Shenzhen Bay Hong Kong Port Area submitted to the Legislative Council on 9 May, among which is the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice.

Regarding Mr James TO's proposed amendments to column 3 of items 1, 2, 3 and 5 in the Schedule to specify that the persons concerned are not allowed to leave the immediate vicinity of the vehicle without reasonable excuse, the Administration has explained to the Subcommittee that the conditions specified in column 3 aim at preventing people in the Closed Area from leaving the immediate vicinity of their vehicles so as to avoid loitering, thus adversely affecting the order of the Closed Area. The police, when enforcing the law, will exercise proper discretion and fully consider the merits of each case. In particular, they must act in a reasonable manner. Under special circumstances such as the occurrence of an emergency, the police will exercise discretion and will not initiate prosecution against those who have technically violated the law.

The Administration opines that if Mr TO's amendment is passed, different people may have different interpretations of the provisions, thus leading to unnecessary disputes between the person concerned and the law-enforcement officers or other passengers. This will make law enforcement more difficult and cause adverse impact on the manpower of the police.

The legal adviser of the Subcommittee is of the view that most of the emergencies will be covered by the general defence of necessity under common law and Mr James TO's amendment may not be necessary.

Regarding Mr James TO's other proposed amendment which allows people entering Hong Kong via the Passenger Terminal Building to turn back to Shenzhen immediately, the Administration said that the police would exercise proper discretion in law enforcement and will fully consider the specific situation of each case, particularly the need of reasonable law enforcement. Under special circumstances where it is proved that someone, after entering the frontier control point, really needs to turn back urgently, the police will exercise

discretion and grant permission. The Administration has pointed out that once Mr James TO's amendment is passed, loopholes will be created enabling people with ulterior motives, such as smugglers and "itinerant traders", to turn back and take advantage of the system.

Next, I will talk about the DAB's views on Mr James TO's two amendments.

Mr James TO has really looked into the legislation very carefully and raised some unique viewpoints. Basically, we have exchanged views at the meetings of the Subcommittee. Careful scrutiny is certainly a factor but necessity is another consideration. The first amendment mentions the so-called "immediate vicinity". Mr TO has also cited some examples, such as collisions and disputes among people. He then asked what should be done. Or, when the vehicle has run out of fuel, should the driver stay in the vehicle and not allowed to fill the tank? Or, if the driver suffers from stomachache or diarrhea, should he be prohibited from leaving, not even going to the toilet? Precisely because of these situations, I have looked into the past practices in these situations. Since the current arrangements at the Port Area is not a brand new arrangement and similar arrangements had been made at other places in the past, I believe that incidents such as people suffering from diarrhea, insufficient fuel or collision between people occur almost every day. But according to the past situations, no citizen was impeded from leaving his vehicle. So, I think the amendment is unnecessary because the arrangement has been proved effective. As I just said, this is not a brand new practice. So, I basically do not agree with this amendment.

The second amendment is about the situation where a person wishes to turn back to the Mainland immediately after entering Hong Kong. The original provision is adopted from the relevant provisions in respect of other control points. After reading the provisions carefully, we will find that the original intention of the provisions or one of its functions is to make smuggling activities of some "itinerant traders" more difficult or eradicate such smuggling activities. Mr TO should know and understand that commodities sold by "itinerant traders" are not allowed and it is hoped that they can be eradicated because of the adverse impact on Hong Kong economy. Mr TO has just cited an example, pointing out that there are not too many commodities subject to taxation in Hong Kong. So, there will not be too many commodities being brought back to Hong Kong in such a situation. However, he should not forget that this is a bilateral activity.

Despite a relatively small amount of dutiable commodities in Hong Kong, there are many in the Mainland. If we take a look at Lo Wu station, we will see that many itinerant traders are travelling to and fro.

So, the relevant provision should exist in order to curb such activities. But regarding other situations like the examples cited by Mr TO such as an emergency has occurred, a relative has fallen sick, and so on, resulting in a need for the person concerned to turn back, there were numerous examples in the past and such situations happen at the check points every day. I have also encountered such a situation myself. Upon arrival, I suddenly realized that I had missed something and had to turn back. The law-enforcement officers will certainly grant permission under such circumstances. Basically, discretion can be exercised in such a situation and everyone is satisfied. Concerning the situations mentioned in these two amendments, we basically have not received any complaints about inconvenience caused under such circumstances. We fully understand the intention of Mr TO. However, if it is not necessary or will even foster some illegal activities, we will find it totally unacceptable. Thank you, Madam President.

MR ANDREW LEUNG (in Cantonese): Madam President, this piece of subsidiary legislation is, in fact, one of the important pieces of subsidiary legislation for the law-enforcement department to enforce the law in the Shenzhen Bay Port Hong Kong Part Area. The law itself does not allow any loophole for anyone to conduct illegal activities. What Mr LAU Kong-wah has said just now is in line with the position of the Liberal Party.

This resolution has been thoroughly deliberated in the meetings of the Subcommittee of the relevant subsidiary legislation. With respect to Mr TO's proposals, the Hong Kong Police Force have already explained clearly to us in the meetings that for people entering Hong Kong via the Shenzhen Bay Port Passenger Terminal Building, before they enter Hong Kong, if they have a need to turn back immediately to the Mainland after entering the territory, they can do so by following the same practice used by other control points right now, that is, by applying for a closed area permit pursuant to section 37(2) of the Public Order Ordinance of Hong Kong. However, in case of emergency, such as those situations described by Mr TO and Mr LAU, we do have an effective solution and that is, contacting the police. Just as Mr LAU has said, many such cases happen day in, day out and the police can accommodate them easily. The

police would exercise discretion to provide assistance to the person(s) concerned, which would not breach any law, or render the person(s) liable to prosecution.

We in the Liberal Party agree with the authorities that it is indeed impossible to list clearly in the law all exceptional and unforeseeable cases.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I now call upon the Secretary for Security to speak.

SECRETARY FOR SECURITY (in Cantonese): Madam President, we oppose the amendments to the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice (the Notice) proposed by Mr James TO.

In relation to the situations about which Mr TO has expressed concern, the Subcommittee on the relevant subsidiary legislation has conducted very thorough deliberations. I wish now to restate the stance of the Government.

First, Mr James TO considers that the condition laid down in items 1, 2, 3 and 5 of the Schedule (that is, the driver or passenger shall not leave the immediate vicinity of the vehicle) is too rigid and does not cater for emergency situations where evacuation may be required. Mr TO has proposed to amend column 3 of items 1, 2, 3 and 5 of the Schedule to the effect that the persons concerned shall not leave the immediate vicinity of the vehicle without a reasonable excuse.

We must emphasize that the provision concerned seeks to prevent any persons from leaving the immediate vicinity of their vehicles whilst in the closed area and thereby prevent any loitering in the closed area that would adversely affect the order of the closed area. "Immediate vicinity" is a matter of fact and degree, rather than exact measurement. The law-enforcement agencies will

exercise reasonable judgement in the interest of maintaining order in the closed area.

As with the enforcement of all other laws, the police will pay due regard to the circumstances of each case and exercise discretion suitably. The police are under duty to prevent injury to life in emergencies. The police will exercise discretion in cases of emergency where a person has a reasonable need to leave the vehicle and will not charge the person for a technical breach of the law. As a matter of fact, the common law accepts "necessity" as a general defence, in other words, the defence of necessity. The defendant may use a necessity (such as his life, property, safety or health is threatened) as a ground of defence.

According to experience in managing other land crossings, we hold that the existing mechanism has been proven in handling emergency situations where the drivers or passengers have the need to evacuate from the vehicles. We do not need to amend the Notice to expressly provide that a person shall not leave the vehicle without a reasonable excuse. The amendments proposed by Mr TO, if passed, may give rise to different interpretations by individuals, and thereby cause unnecessary disputes between the drivers or passengers and the law-enforcement officers. Such disputes will unnecessarily increase enforcement difficulties, waste police manpower and affect effective enforcement.

Another situation, about which Mr TO has expressed concern, is that persons who enter Hong Kong via the Passenger Terminal Building may have a need to return to the Mainland immediately because of special circumstances. He has proposed adding a new item 3A to the Schedule to the effect that persons who have entered Hong Kong via the Passenger Terminal Building will be permitted to return to Shenzhen immediately.

The Notice seeks to issue a general permission to obviate the need for *bona fide* cross-boundary passengers and other relevant persons (such as bus drivers ferrying these passengers) to apply for a closed area permit under section 37(2) of the Public Order Ordinance to enter and leave the Hong Kong Port Area. Travellers who pass the clearance via the Passenger Terminal Building are in general for the purpose of entering Hong Kong. The Notice has fully addressed this general situation. We do not consider it appropriate to use this permission notice, which is general in nature, to cater for special circumstances

where persons, having just entered Hong Kong, have to immediately return to the Mainland.

As said above, the police will exercise discretion suitably in enforcing the law and pay due regard to the actual circumstance and requirements of the case. If a person, who has entered a border control point, has a genuine need to turn back urgently, the police will exercise discretion and permit the person to do so.

The amendments proposed by Mr TO may give rise to loopholes which may regularize special situations of having to turn back to the Mainland immediately after entering Hong Kong, and may be exploited by those who want to frequent the border control points for ulterior motives such as smuggling or itinerant merchandising.

The situations, about which Mr TO has raised concern, can be addressed by the existing mechanism which is proven and it is not necessary to amend the subsidiary legislation. Moreover, the amendments proposed by Mr TO may create difficulties in law enforcement.

For effective management of the Shenzhen Bay Port, it is of the utmost importance that the police have the capability to enforce the law effectively in the closed area. After thorough scrutiny, the Government opposes the amendments to the Notice as proposed by Mr TO.

I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr James TO to reply.

MR JAMES TO (in Cantonese): President, first of all, I heard Members refer to my second amendment as "giving rise to loopholes", but they failed to say at all what the loopholes are, while I could say in detail how to plug the loopholes.

I thought that Members, unlike the Secretary who once headed the Immigration Department and now takes charge of also the Customs and Excise Department and the Hong Kong Police Force, might not be able to anticipate all situations. I thought only Members could not name the situations, as they might

really be unable to anticipate the relevant situations. However, being the leader of hundreds of thousands of disciplined force officers, and considering especially that officers stationed at the port area can offer him advice, the Secretary should be able to say what the loopholes are. If and only if he could name one loophole, he would have at least convinced Members, for the record; he, however, only said that it might give rise to loopholes.

In this regard, I have to at least express my disappointment. To put it plainly, the Secretary was simply unable to name the loopholes. Secretary, having exhausted the wits of thousands of Customs officers, tens of thousands of police officers and tens of thousands of immigration officers, coupled with the fact that you were once the Director of Immigration, are you still unable to name one loophole? I hold that if a government official can only come up with such a reply, he or she is acting irresponsibly, and is also dealing a big insult to the Member who has proposed the amendments.

The Secretary could not even name one loophole and only said that it might give rise to loopholes, while I can name one right now. That is, according to the original provision before amendment, under those situations, discretion has to be exercised, rather than the law providing for a person to lawfully leave the vehicle in emergency situations. This is a concept upholding the rule of man rather than the rule of law.

The grounds held by many Members and the Secretary are flexibility in judgement making, a matter of fact and degree, the exercise of discretion and that the police and law-enforcement officers will deal with the matter reasonably. What kind of attitude is this? In the course of drafting a law, if we encounter situations in which, no matter how much effort has been spent and despite great draftsmanship, the line between legality and illegality still cannot be drawn, we may need to supplement this answer based on these grounds. However, if there is now already an amendment which can draw this line, we definitely should not say that it should not be adopted and that sole reliance on discretion will do.

Members also heard just now that the Secretary and Members have emphasized time and again that this will not happen, and that the exercise of discretion has been proven. I really feel disappointed about these remarks. Let me cite an example. Some Members mentioned (the Secretary has also mentioned this point, just that not as clear) defence of necessity in common law. Mr LAU Kong-wah in tabling the report on behalf of the Subcommittee quoted

"most emergency situations" from the legal adviser. Frankly speaking, I find our legal advisor rather honest because I myself have also examined many cases in detail for this. In fact, it is disappointing enough that the tabling of such a tiny amendment has involved such detailed studies which the Government did not do at all. Indeed, "most (emergency situations)" was mentioned — but remember, only "most" and "most" is not equal to all. Thus, for situations not covered by "most emergency situations", what should be done? Resorting to the exercise of discretion again?

Talking about providing reasonable excuse, some Members said that reasonable excuse varies from person to person and is open to different interpretations by individuals. The Secretary said so. However, I wish Members will understand that the term "reasonable excuse" is not invented by me. From Chapter 1 to Chapter 1000 or so of the Laws of Hong Kong there are numerous places and numerous situations where exceptions, such as by providing lawful justification or reasonable excuse, are stipulated. If you say that all such exceptions vary from person to person and are open to different interpretations by individuals, and thus they will lead to enforcement difficulties, then, are not all legislative provisions difficult to enforce? This is impossible. If enforcement actions are carried out under the Public Order Ordinance (as the 1 July public procession is coming soon), by then, situations like thousands of police officers confronting tens of thousands of citizens may arise, and many such situations will allow the provision of reasonable excuse and lawful justification. Then, will those situations be interpreted differently by individuals?

I hold that — if I may say this to the Secretary — by adopting such a casual attitude of debate and shallow depth, you are actually looking down on your opponent.

The Secretary holds that he has sufficient votes any way and he has counted the votes for a sure passage of the motion, he can thus disregard amendments proposed by other Members. He only needs to care about a few Members, so he has me done and over with by casually responding to me. As the Secretary, such rationale and logic seems a little low. I hope the Secretary can go a little deeper. If the Secretary has conducted a thorough study and then put forth a tenable argument, he would be able to refute me and I would be willing to withdraw my amendments. However, if the Secretary wishes to finish the business briskly with such a feeble argument, would this not reveal in

the record of this meeting that the Government lacks manpower; or that someone is doing his job perfunctorily; or that there are other reasons?

Some Members said that the police would exercise discretion in cases like someone suffering diarrhoea or a car accident has happened. In fact, all such situations have already been deliberated. However, if these can be provided for but are not provided for in law, rendering the frequent exercise of discretion necessary, this will become a community where the rule of man rather than the rule of law prevails.

This makes me think of (as some Members are present just now, I will say a few more words) yesterday when we scrutinized the Mass Transit Railway Bylaw and also discussed an emergency situation. That was really amusing. It specifies that there are exceptions in cases of emergency or accident. Why? Because under normal circumstances, one surely cannot get onto or get off the train while it is moving; but when it is necessary, it will be an exception. When is it necessary? It will be in the case of emergency or accident. It is stipulated so and it is not an uncommon provision. In the same vein is the case of interfering with the gate. If a child is caught between the gates, would we not force open the gates? Certainly we would do so.

Therefore, the case is that, if something is necessary, will Members please consider it seriously. Although most situations can be covered by reasonable excuse in common law, except a minority of them, should we not consider using suitable wordings to address the issue?

In fact, at the end of the day, it is all because of the border crossing has to be inaugurated for HU Jintao, necessitating that everything be done in a hurry, works rushed and discussion not allowed. That is it. In fact, the Department of Justice of the Government, with hundreds of lawyers employed, absolutely can draw the line defining what acts can or cannot be done. They are capable of doing so. The authorities should at least explain whether "reasonable excuse" or "lawful justification" is more appropriate because both of them have sufficient cases for reference. However, they did not even draft one document to explain their case because, in any case, the amendments cannot secure sufficient votes for passage, so explanation is not necessary. What is the use of explanation anyway? This is the way our Government is. Everything has to be ready by around 27 or 28 June.

Last but not least, President, I am fully aware that this amendment will be negated at any rate. However, I hold that if the law itself ought to be amended and Members can name some situations as grounds for amendment, the Government should adopt a more pragmatic attitude and a relatively similar level of depth in the debate, in preparing documents, and in elaborating and explaining its case, so as to facilitate this interactive thinking and debating process, in a bid to perfect the law rather than getting the motion passed with merely sufficient votes.

I am utterly disappointed with this debate. I hope the Government or colleagues in the Department of Justice can study these issues thoroughly in the future. Especially considering that we still have other bills to scrutinize, we should adopt a more stringent attitude in deliberation and scrutiny. In relation to these amendments, I have indeed spent a lot of time pondering and examining the solution. This is not an easy process. In fact, the Government, with its resources, can do an even better job.

As such, I am really a little overcome with emotions because this year happens to be the 10th anniversary of the reunification. The work ethics of the Department of Justice under the colonial Government was not like this. If he recognized the subject of a certain amendment — such as he realized that I wished to provide for reasonable excuse — he would probably say that the draft was not that good and would ask me whether it could be presented in another way. He might even adopt the theme of the amendment and propose an amendment himself; or he might take the amendment back for study and then come back to me saying that he did not know whether the amendment could be passed, but even if I wished to amend the law this way, he would tell me that it would be better to use this word rather than the one originally used, so on and so forth. Yet, under the present Government, there will not be such partnership and there will not be such a working relationship because our Government wants strong governance and be executive-led. This is the Government now.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TO 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 James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr SIN Chung-kai, Ms LI Fung-ying, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the motion.

Geographical Constituencies:

Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat and Mr Ronny TONG voted for the motion.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr CHEUNG Hok-ming voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, six were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through direct elections, 18 were present, nine were in favour of the motion and eight 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 motion was negatived.

PRESIDENT (in Cantonese): Two motions with no legislative effect. First motion: Elderly in poverty.

I now call upon Mr Frederick FUNG to speak and move his motion.

ELDERLY IN POVERTY

MR FREDERICK FUNG (in Cantonese): President, I move the motion concerning the Report on Elderly in Poverty.

First of all, I will speak in my capacity as Chairman of the Subcommittee to Study the Subject of Combating Poverty (the Subcommittee). The Report on Elderly in Poverty is the third report of the Subcommittee. The Subcommittee's first report is on working poverty and the second report is on women in poverty. The two reports were submitted to the Legislative Council in February and July 2006 respectively.

In order to study the subject of elderly in poverty, the Subcommittee gauged the views of non-governmental organizations (NGOs) and held discussions with the relevant bureaux/departments.

According to the projections made by the Census and Statistics Department (C&SD), the population is projected to increase at an average annual rate of 0.7% to 8.38 million in 2033, and the life expectancy will continue to increase to 88 for women and 82.5 for men. It is also projected that among every four Hong Kong people, there will be one person who is aged 65 or above in 2033, and the median age is 49.

On further analysis of the data of the C&SD, the Subcommittee found that 20% of the elders aged 65 or above are receiving Comprehensive Social Security Assistance (CSSA) and more than 50% are on Old Age Allowance (OAA) under the Social Security Allowance Scheme. It is found that over 60% of the increase in these low-income households over the past decade was attributable to the rapid rise in the number of elderly, retired households. Meanwhile, almost half of bed days in public hospitals are taken up by elders aged 65 or above.

According to the analysis on the above data, as our population is ageing, it is a problem if people are unhealthy and unable to care for themselves, and would result in dependence on public resources support. Given that the conventional retirement age is 60 to 65, and the average life expectancy being 79.5 for males and 85.6 for females, the older population will live a long retirement life of 20 years or more. The lack of adequate financial means for them to meet the basic requirements of their long retirement life will present a major problem.

The Subcommittee is of the view that the phenomenon of elderly in poverty is the result of many social, cultural and institutional factors. The following are some major causes of elderly in poverty:

- (a) insufficient social security assistance for the elderly;
- (b) insufficient retirement protection;
- (c) heavy financial burden of medical and health care expenses; and
- (d) insufficient long-term residential care and support services for the elderly.

Before the introduction of the Mandatory Provident Fund (MPF) schemes in 2000, there was no retirement protection for most workers. The schemes could not benefit the current generation of elders as they had not participated in

the schemes. For those elders who cannot accumulate adequate savings for their twilight years when they were young, they will face great financial hardship in old age.

The Subcommittee considers that the Government should take precautionary measures to prevent the elderly population from falling into poverty and alleviate the problems faced by them. I have summarized the 25 proposals of the Subcommittee into eight major areas:

- (i) to provide financial assistance for the needy elderly;
- (ii) to provide medical services for the elderly;
- (iii) to provide care and support services for the elderly;
- (iv) to provide residential care services for the elderly;
- (v) to take care of the housing needs of the elderly;
- (vi) to provide retirement protection for the elderly;
- (vii) to provide financial security for the elderly; and
- (viii) to promote positive ageing in the community.

As these 25 proposals have been detailed in the report, I wish to emphasize the following points only:

- (i) The Government should abolish the income and asset limits for OAA recipients, relax the permissible limit of absence for OAA, and extend the Portable CSSA Scheme to all places outside Hong Kong in order to encourage the elderly to seek social security assistance;
- (ii) The Government should consider providing public medical services at half-price and expedite the setting up of public Chinese medicine clinics and dental clinics in order to ensure that the elderly will get timely and affordable medical services;

- (iii) To cope with the demand for care and support services in an ageing population, members have also advised the Government to expedite the provision of residential care homes for the elderly (RCHE) places so as to shorten the waiting time to less than one year and consider providing direct subsidies to the elderly so that the needy elderly can be admitted to private RCHEs with good service standards; and
- (iv) To promote the objective of "ageing in the community", it is also proposed that public housing should be allocated to families with elderly members on priority basis so that the young can take care of them. The Government should also build more separate small public housing units and relax the elders' eligibility for public housing so that those who own dilapidated private properties can also apply for public housing and improve their living conditions.

President, I wish to stress that the elimination of poverty cannot be achieved overnight. It is necessary for the Administration, NGOs and various sectors in society to work together, engage in sincere co-operation in providing opportunities to the disadvantaged in society and eliminate and prevent unfairness in policies and measures, so that various sectors of society can give play to their abilities in various areas and promote social and economic advancement. The elimination of poverty is not a distant and impossible dream. To eliminate the human and social causes of poverty is the goal that all advanced societies are striving towards unrelentingly. It is my hope that the Administration and various sectors in society will not remain at the stage of helping the poor but will be more far-sighted and bold in eliminating the various unfair situations leading to poverty.

President, next I wish to speak in my personal capacity or the capacity of a Member.

As I just said, this is the third report of the Subcommittee. Here I would like to thank the organizations which have expressed their views to members or tabled their submissions to the Legislative Council.

Like the two previous reports, this report has incorporated the views of different parties and Members with different stances and a consensus on the causes of elderly in poverty, the present situation and proposals has been

reached. Apart from that, footnotes are added where appropriate to specify different opinions or reservations. So, it is hoped that my original motion will be supported and passed. Although I know that some Members or parties are holding different views, I hope they will eventually support the report so that it will not end up in a lose-lose situation where nothing is achieved.

It is also necessary for me to strike home a clear message to the public and the Government. In Hong Kong, an affluent society with an average annual *per capita* income of more than US\$27,000 in 2006 or a monthly *per capita* income of \$18,000 or \$72,000 for a household with four members, there are still 1 million people living in a family with a monthly income of \$5,000 or less. The elderly who are living in these families will certainly face a harder life.

Most of the elderly are in poverty not because they are slackers or not hard working. On the contrary, the development of Hong Kong from a small fishing village into a world city is the result of the hard effort of numerous workers in the past few decades. Without any comprehensive employment and retirement protection, these workers repaired bridges and built roads for us while women worked odd jobs to support their families despite the low pay and long working hours. They thought that they could spend their twilight years on their savings after retirement. But the fact is that their meagre savings cannot cope with the inflation in the past few decades at all. The elderly in poverty is not a problem of their own making, but due to obsolete and unreasonable social policies. Is our society so cold-blooded and apathetic? Can we really turn a blind eye to those who have contributed to the success of Hong Kong and let them live in an abyss of misery in their twilight years?

Concerning the proposals in this report, I wish to mention two points in particular. First, to provide health care service to the elderly. As we all know, many organizations and elders came to the Legislative Council two days ago to urge for an increase in Chinese medicine out-patient service. In the policy address in 2001, the Government promised that it would set up 18 Chinese medicine out-patient clinics by the end of 2005. But only nine such clinics have been set up so far. Although the Government has undertaken to set up another five, meaning that a total of 14 will be set up, it still falls short of four when compared with what has been promised. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I request the Government to seriously look into the elders' needs and set up Chinese medicine out-patient clinics in various districts expeditiously.

The ADPL and I urge the authorities to improve the telephone appointment service with out-patient clinics. Although the Hospital Authority has implemented three additional improvement measures since the middle of last month, the difficulty of the elderly with hearing impairment in using this service remains unsolved. The ADPL proposes that the authorities help the elderly with hearing impairment make direct registration, increase the quota for out-patient service and set up an out-patient special telephone line for the elderly so that the needy elderly can make use of public out-patient service.

On the other hand, the problem of ageing population. Despite numerous debates on this issue in this Chamber, the Government remains undecided. Although Chief Executive Donald TSANG has pointed out the seriousness of the problem of an ageing population in Hong Kong, it is a global trend instead of a great scourge by itself. Most importantly, the Government should make precautions and formulate appropriate policies immediately in order to cope with the social change.

At present, the elderly, housewives and low-income earners cannot benefit from the MPF. The ADPL and I urge the Government to formulate and implement a universal retirement protection scheme entailing tripartite contribution by the Government, employers and employees as early as possible so as to solve the poverty problem of the elderly, especially the elderly in poverty, immediately. This will better cope with the needs arising from demographic changes in Hong Kong.

Finally, I would like to remind everybody that one of the strategic objectives of the Government's policies 10 years ago is to take care of the needs of the elderly with the goal of "giving them a sense of security, a sense of belonging and a feeling of health and worthiness". It is hoped that the Government, amidst the joy of celebrating the 10th anniversary of the reunification, will not forget its previous and public promise. Today when the wealth gap is worsening, there remains a group of elderly who have been forgotten and are waiting for our help through the formulation of long-term policies. Once again, I appeal to colleagues of different parties to support my original motion and urge the Government to face up squarely to the problem of elderly in poverty and implement the proposals in the report.

I so submit.

Mr Frederick FUNG moved the following motion: (Translation)

"That this Council endorses the Report on Elderly in Poverty by the Subcommittee to Study the Subject of Combating Poverty and urges the Government to implement the recommendations therein."

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

PRESIDENT (in Cantonese): Mrs Selina CHOW will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mrs Selina CHOW to speak and move her amendment to the motion.

MRS SELINA CHOW (in Cantonese): I believe everyone is very clear that Hong Kong is now facing an ageing population problem and Mr Frederick FUNG has elaborated on this just now. Besides, I am sure that the poverty problem arising from an ageing population is also our great concern.

According to the latest figures of the Social Welfare Department (SWD), there are as many as 152 810 CSSA cases concerning the elderly, accounting for 52% of Hong Kong's total CSSA cases, which stands at 293 952. At present, the number of CSSA recipients aged 60 or above is 187 050, accounting for 36% of the 516 000-odd CSSA recipients in Hong Kong. Besides, there are lots of elderly in poverty who would rather live on the monthly fruit grant of a few hundred dollars than applying for CSSA.

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

As we all know, many elders would not hesitate to eke a living out of collecting cartons in the street. According to a recent report, a hunchbacked

woman scavenger was killed by a car when dashing to the opposite side of a road through a row of cars for picking up a piece of cartoon. It is indeed saddening. Recently, there is another report about an underground scavengers' syndicate in Tuen Mun and Yuen Long which has been competing fiercely with the elderly scavengers. All these make us aware that quite a lot of elders are leading a miserable life in their twilight years.

It is projected that the population aged 65 or above will increase to 27% in 2033. In other words, there will be an elder aged 65 or above in every four citizens and the median age will also rise to 49. The elderly dependency ratio, which means the ratio between every 1 000 people aged 15 to 64 and those aged 65 and above, will also increase from 164 in 2005 to 428 in 2033.

I have cited the above figures and phenomena to illustrate a fact, and that is, the ageing population problem in Hong Kong is worsening, possibly putting a heavier burden on society. The Legislative Council's Subcommittee to Study the Subject of Combating Poverty (the Subcommittee) has also noted the seriousness of the elderly in poverty problem and completed a report recently in which 25 measures have been proposed with a view to preventing and alleviating the problem of elderly in poverty.

As a member of the Subcommittee, I very much agree that the weak and distressed elders should be helped by society. Most of the proposals in the report are also strongly supported by the Liberal Party in principle. For instance, in item (c), it is proposed that the Portable CSSA Scheme be extended to all places outside Hong Kong instead of confining its applicability only to Guangdong and Fujian Provinces as currently is the case. This proposal will not only provide convenience to the elderly who wish to spend their retirement life in their hometown in the Mainland but also set their minds at ease.

Another example is the proposal on streamlining the application procedures for medical fee waiver and extending the waiver to Chinese medicine consultation. We cannot agree more because the elderly are more vulnerable to illnesses and most of them either place trust in Chinese medical practitioners or are used to patronizing them. The proposal can meet the needs of the elderly and alleviate their burden in medical expenses.

However, the Liberal Party opines that the Government should make better use of resources in order to help the needy elderly in view of an ageing

population and dramatic increase in social welfare expenditure. If welfare is distributed to all people in a non-discriminatory manner regardless of their needs or wealth, it will only increase our burden and even the next generation's. Precisely because of this, the Liberal Party strongly objects to the three proposals in the report. Next I will mainly explain why our views are different.

Regarding the Subcommittee's proposal of reviewing and relaxing the requirement for elders to apply for CSSA on a household basis, the Liberal Party disagrees with this because CSSA has all along used a household as a basis for application and such a practice implies that the family members should take care of each other. Should there be any change to this requirement, it will lead to abuse and encourage the children not to support their parents in a disguised manner. This is not conducive to family harmony. According to the figures cited by me just now, however, the elderly on CSSA account for more than half of the CSSA case, showing that the needy elderly will not be turned away under the current system.

Besides, in item (t) of the report concerning the review of the arrangement for offsetting the long service payment or severance payment by the accrued benefits derived from the contribution of employers made for his/her employees to MPF schemes, the Liberal Party also disagrees because such an offsetting mechanism has been implemented and operating for years in a satisfactory manner. Moreover, the current *modus operandi* was a consensus reached by all parties concerned then as well as an important rationale of the Government in convincing the employers to participate in MPF schemes. If the rules of the game are changed now, the employers will have to make much more contributions in a disguised form. As this will lead to a tremendous increase in their burden which is unfair to them, so I believe this will arouse great repercussions.

Concerning item (u) which urges the Government to consider providing universal retirement protection for the elderly, the Liberal Party also objects. As we have implemented the MPF schemes under which both the employees and employers are making contributions for the purpose of providing retirement protection to more than 2.4 million employees, it will only lead to confusion if a new proposal is introduced. Furthermore, we had engaged in vigorous disputes and debates on the form of retirement protection before reaching a consensus of implementing the MPF instead of a universal retirement protection scheme on consideration of fairness and the possibility of leading to a heavy burden on our next generation.

Let me cite another example. The Joint Alliance for Universal Retirement Protection has proposed that a monthly old-age pension payment of \$2,500 or \$3,000 be paid to all elderly aged 65 or above regardless of their wealth and without vetting, apart from another suggestion that half of the MPF assets be contributed by the 2 million-odd wage earners in the territory for the setting up of a universal retirement protection scheme. Is this not tantamount to requiring these wage earners to contribute their own hard-earned assets for the support of other people's retirement life? Will the MPF contributors consider such a scheme equitable? If another set of MPF schemes is to be launched, can they afford it?

Deputy President, as I said at the beginning of my speech, the Liberal Party agrees that the population ageing problem in Hong Kong has become very serious and the elderly who have worked very hard when young and made a lot of contribution to society should be taken good care of when they are old. In particular, those who are unable to care for themselves or not supported by their children should be helped by society. We support that appropriate help and protection in various forms should be given to the needy elderly according to their actual needs. Thus, we agree that the monthly allowance under the CSSA and Social Security Allowance Schemes should be reviewed to see if it is sufficient to ensure that the elderly who have devoted half a lifetime for Hong Kong can lead a happy life in their twilight years without any worry about their living.

Deputy President, I so submit.

Mrs Selina CHOW moved the following amendment: (Translation)

"To add "based on the principle of helping those who are genuinely in need, and not to consider the following three recommendations: (a) reviewing and relaxing the requirement for elders to apply for Comprehensive Social Security Allowance on a household basis; (b) reviewing the arrangement for offsetting the long service payment or severance payment by the accrued benefits derived from the contribution of the employers made to his/her employees in the Mandatory Provident Fund Schemes; and (c) considering providing a universal retirement protection for the elderly" immediately before the full stop."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mrs Selina CHOW to Mr Frederick FUNG's motion, be passed.

MR TAM YIU-CHUNG (in Cantonese): Deputy President, to extend one's respect for one's aged parents to all the aged is a traditional virtue of the Chinese people. Whether a society cares for the elderly and protects them from poverty and sickness can also reflect whether it is a just and caring society. Although Hong Kong is a highly developed economy and relatively affluent, the problem of elderly in poverty is deteriorating due to an ageing population and rapid economic structural adjustment which has led to the worsening of the wealth gap between the rich and the poor.

The Report on Elderly in Poverty by the Subcommittee to Study the Subject of Combating Poverty (the Subcommittee) of the Legislative Council has studied the problems faced by the elderly and proposed a series of strategies and measures for helping the elderly in poverty. As these proposals are consistent with the DAB's long-standing position, we hope the Government can implement them early.

In discussing the problem of elderly in poverty, the focus of the community is often on the CSSA recipients. But apart from CSSA recipients, many elders are leading a poor and hard life. Although the elderly have some savings, which are in fact their "last stakes", they dare not spend them unless extremely necessary. So, they are very frugal in their daily life. For instance, when paying a visit to some grannies, I saw that kerosene stoves were used for cooking because they were even reluctant to use gas or liquefied petroleum gas stoves. In the use of electricity, they are so environmentally-friendly that their lights are very dim. They also economize on water in order to cut the expenses. Despite being thin and hunchbacked, some elders are still pushing a big wooden cart while collecting cartons and aluminum cans everywhere in the hope to enhance their income. And this is their only source of income. Although some elders are living with their children, their children can barely make both ends meet. Apart from providing three meals to their parents, they have no extra money to improve their parents' standard of living. Owing to various reasons, however, they are reluctant to sign the paper certifying they are unable to support their parents. As a result, the elderly cannot apply for CSSA because the Social Welfare Department's requirements are not met. Hence, they are still leading a difficult life.

To solve the problem of elderly in poverty, the Government cannot rely on the CSSA system alone. The existing problem of the Old Age Allowance (OAA) and CSSA system is that the amount of OAA payment is not sufficient for the elderly to make ends meet while the requirements for the elderly in applying for CSSA are too stringent. So, to help the elderly in poverty, the Government should set up a subvention scheme for the elderly so as to provide essential financial support to the elders who cannot apply for CSSA. In 2003, the Government indicated that it would review the OAA system. But due to the huge financial deficit, the launch of new measures was delayed. As the Government's fiscal position has much improved now, it should be able to implement new measures. Regarding the mode of subsidy, the system of education vouchers for kindergartens should be taken for reference. We believe such a practice is worthy of a trial and will prove successful. The Government can help the elderly in poverty to pay their essential expenses by means of vouchers. This will help the needy elderly and ensure effective use of financial resources.

Apart from the provision of cash, the Government can also consider other measures such as the rent assistance scheme and medical expenditure allowance. The Government should relax the restriction on application for rent assistance on public housing by the elderly, especially those affected by urban renewal. It is necessary to set up a rent remission scheme which can really enable them to improve their living conditions. Regarding medical expenses, the Government should also provide a more lenient medical waiver for the elderly in poverty as a buffer against increase in medical expenses. In addition, the enhancement of Chinese medicine service in public hospitals and the setting up of a waiver of Chinese medical fees are an issue of great urgency.

Another concern of the elderly is the permissible limit of absence for OAA. More and more elders wish to reside in the Mainland as various social facilities there are improving. However, the Government insists on imposing the 270-day absence limit. As a result, many elders who wish to live their retirement life in the Mainland are discouraged from doing so. Apart from further relaxing the relevant limit, the Government should strengthen co-operation with various mainland provinces and cities in medical and social services and support so that the needy elderly can freely choose a better living environment.

It is specified in the report that the Government should review and relax the requirement for elders to applying for CSSA on a household basis, review the

arrangement for offsetting the long service payment or severance payment by the contribution of employers made for their employees to the MPF schemes, and consider the provision of universal retirement protection for the elderly. All these three measures have been the unfailing position of the DAB.

While helping the poor is a long-term social engineering project, the Government needs a goal, a direction and a focus in helping the elderly in poverty to ensure that policies are effective and every elder who has contributed sweat and youth to the development of this city can share the fruits.

I so submit. Thank you, Deputy President.

PROF PATRICK LAU (in Cantonese): Deputy President, with respect to the issue of elderly in poverty, it is most important to provide the elderly with a better living environment. Insofar as residential care homes for the elderly (RCHEs) are concerned, it is most important to build more comfortable homes for the aged providing fresh air and a tranquil environment for them. Furthermore, the homes for the aged must be designed to cater for retirement life with planning support for a small community in order to provide the elderly with proper leisure facilities, and even community entertainment facilities. What is more, space must be reserved for accommodating visiting family members. This can ensure that the elderly can spend their twilight years happily without feeling lonely or being abandoned.

Elderly people who stay in RCHEs away from their family members are already not feeling good. Their situation will get even worse if they live in a crowded environment with poor hygiene. As a result, there has been a rising trend of elderly depression cases. This is particularly so for some poverty-stricken elderly people, because they can only stay in homes for the aged where the living environment is relatively poor. Not only will they stand a higher chance of suffering from depression, their health will even be affected.

Therefore, I think more effort should be made by the Government to adopt the model of RCHEs in building care and attention homes for admission of elderly people, which will be regularly attended by Chinese and western medical practitioners and properly operated by NGOs. In this way, the existing homes for the aged operating in old tenement buildings in poorer conditions can be phased out, and the general living environment of RCHEs will be improved.

I hope the Secretary has visited the Tuen Mun Home for the Aged Blind, which was designed by me. It is a good example. If other homes for the aged can meet the same standard, they will be able to cope with the needs of elderly people aged over 65 whose number is expected to exceed 2 million by 2033.

Actually, many of the existing elderly problems, especially the growing number of elderly abuse cases, are caused by unsatisfactory living conditions. This is indeed understandable. The chances of clash will naturally rise if too many people live under one roof with too little space for each of them. A lot of elderly problems will arise as a result.

Despite my support for the recommendation in the report compiled by the Subcommittee to Study the Subject of Combating Poverty to accord priority in allocating housing to families living with elderly people so as to encourage the young to care for the elderly, promote and develop Chinese traditional notions of family and the virtue of filial piety, I am more supportive of the idea of building more separate public housing units for healthy elderly people. In doing so, the elderly are no longer required to share facilities with others, so that they will enjoy more personal space and encounter fewer problems caused by crowded living conditions.

Furthermore, I think that more consideration should be made in the context of the Buildings Ordinance. At present, public housing is designed in such a way that kitchens and toilets have to comply with fixed layout requirements. As a result, many public housing units are extremely small, with inadequate space available for use. In this respect, I see that many other countries opt for such designs as open kitchens, which are useful to solving the abovementioned problem.

I have once visited Japan to study the construction of houses for the elderly there. Of the diversified approaches adopted, I was most impressed by the one called "houses for two generations". Most importantly, two generations of the same family will be arranged to live close to each other in allocating housing so that they can take care of each other while enjoying their own living space. Even in the event of disputes, they can go back to their own homes to calm down. On the other hand, family members can demonstrate the spirit of mutual assistance as they live near each other, thus fostering better social harmony.

Actually, Deputy President, once the problem of elderly accommodation is ameliorated, the Government will be able to greatly cut down on its expenditure on tackling growing problems relating to elderly depression, elderly abuse, domestic violence, and so on, and subsequently pool resources for allocation of funds to provide better welfare for the elderly, thereby thoroughly resolving the problem of elderly in poverty.

Therefore, I think that the Government should seriously review its policy direction in this particular area. I so submit. Thank you, Deputy President.

MR WONG KWOK-HING (in Cantonese): Deputy President, first of all, I would like to express my thanks to all members of the Subcommittee to Study the Subject of Combating Poverty (the Subcommittee) of the Legislative Council for their efforts made over the past six months or so. Though I am not a member of the Subcommittee, the poverty problem of the grassroots has all along been a matter of great concern to me. Among others, the problem of elderly in poverty has been worsening in society in recent years. Moreover, this problem will only further deteriorate in the foreseeable future. The Government is indeed obliged to formulate long-term policies expeditiously to resolve the problem.

It is an indisputable fact that Hong Kong has an ageing population. In less than three decades, more than one fourth of the population in Hong Kong will reach the age of 65 or above. The elderly dependency ratio will also soar from 164 in 2005 to 428 in 2033. According to the information provided by the Census and Statistics Department, in the first quarter of 2006, there were some 111 400 elderly singletons aged 65 or above in Hong Kong, representing 13.9% of the total elderly population, thus reflecting the wide implications and gravity of the problem of elderly in poverty. Because of a lack of comprehensive retirement protection in the past, elderly people will still have to worry about their own living after retirement. At the same time, there are at present some 1.24 million people aged between 45 and 59 in Hong Kong, and yet nearly 70% of them are without retirement protection. These people, who will be retiring over the next decade, might constitute a potential elderly in poverty problem.

A total of 25 recommendations are made in the Subcommittee's report in the hope that serious consideration can be given by the Administration. Among others, the proposal of lifting the restriction on absence of Old Age Allowance

(OAA) recipients has been raised in recent years by the Hong Kong Federation of Trade Unions (FTU) almost every time before the publication of the Budget. Unfortunately, it has yet been adopted by the Government even after such a long delay. At present, more and more elderly people have chosen to live out their retirement life back in their hometowns. However, they are often required to travel a long way back to the territory after a certain period of time for their OAA. How can we bear to let this happen? The SAR Government is effectively making life difficult for the elders in Hong Kong and discriminate against their need to lead their retirement life within the same country by refusing to lift the restriction of absence for OAA recipients.

Deputy President, I am really puzzled by the Liberal Party's amendment. In the past, the Liberal Party often put forward their unique point of view on welfare policies and the issue of helping the poor. In the motion debates held with respect to reports published by Subcommittees in the past, the Liberal Party rarely proposed amendments like this one. In its amendment, the Liberal Party explicitly appeals to the Government not to consider relaxing the requirement for elders to apply for Comprehensive Social Security Assistance (CSSA) on a household basis; reviewing the arrangement for offsetting the long service payment or severance payment by accrued benefits under MPF schemes; and providing universal retirement protection for the elderly. Deputy President, the Liberal Party has indeed been too conservative in making these three requests to the Government! Why is the Government even disallowed from giving consideration?

Deputy President, I think that the relaxation of the requirement for elders to apply for CSSA on a household basis is indeed helpful to those elders who have to live with their children but are not supported by them. Furthermore, the amount of government expenditure entailed as a result of relaxing the requirement is very limited. However, this will bring a more stable life to the elders. Why can the Government not give consideration? Why does the Liberal Party disapprove of the Government doing this? Why can this proposal not be supported?

With respect to reviewing the arrangement of offsetting the long service payment or severance payment by the accrued benefits derived under MPF schemes, we have seen in recent years a large number of cases in which wage earners were laid off or made redundant due to changes in the economic conditions. If the long service payment or severance payment is offset in all

cases of layoff or redundancy, most of the retirement protection of wage earners will disappear. This means that wage earners will become unprotected when they retire. Because many laid-off workers will inevitably have to rely on their severance payment to support their living and thus be compelled to sacrifice their long-term protection after retirement. I find it somewhat reasonable that the Liberal Party proposes not to consider this point because the Liberal Party represents the interest of the business sector. However, why can the Government not study, discuss and consider the matter? The business sector has indeed been too selfish.

As regards universal retirement protection, the FTU has since the '70s been striving to promote a universal retirement protection system involving tripartite contribution by the labour side, employers and the Government with a view to expeditiously resolving the problem of livelihood confronting the elders upon retirement. However, the proposal was eventually rejected by the then Government, and the golden opportunity of setting up a comprehensive retirement protection system was thus wasted. It was only until 2000 that the MPF schemes were finally launched by the SAR Government. Nevertheless, the schemes are a far cry from our proposed universal retirement protection system involving tripartite contribution by the labour side, employers and the Government for unemployment, medical and retirement protection.

Hence, I think that each of the above measures should be considered. Furthermore, the Subcommittee is not requesting that the 25 recommendations be all implemented. It has merely requested the Government to consider the feasibility of implementation so that the community will have ample opportunities to discuss the matter. Is it pragmatic and fair of the Liberal Party to disallow any chances of consideration and reject them altogether in formulating public policies? I very much hope that the Liberal Party can stop acting in this manner so that everyone can have a chance to be involved in the consideration and discussion process.

MS LI FUNG-YING (in Cantonese): Deputy President, the Report on Elderly in Poverty, compiled by the Subcommittee to Study the Subject of Combating Poverty (the Subcommittee) and debated in this Council today, happened to be published right after the publication of the report published by the Commission on Poverty (the Commission) set up by the Government. Upon comparison of the two reports, I find that there are apparent differences between them. There

is nothing strange about this, because the former was compiled by a Subcommittee set up under the Legislative Council with a public mandate. Furthermore, it requires no unanimous consensus among all members of the Subcommittee. Members of the Commission were, on the contrary, appointed by the Government. As the Commission's report has to be endorsed by its members, varying degrees of compromise will inevitably be required.

I am a member of the Subcommittee as well as a member of the Commission. The purpose of my comparison of the two reports is not to identify their differences for appraisal. On the contrary, my focus is on what the two reports have in common. I believe there is no reason for the Government to refuse to expedite the implementation of the direction agreed by the legislature and the executive in developing elderly services to enable the elderly to benefit from the services expeditiously.

What elderly services are agreed upon by both reports? In this respect, I would like to adopt the classification system used by the Commission. In the area of social needs, the Commission in its report proposes advocating social integration and encouraging the elderly to participate in social activities. This is consistent with the proposal made by the Subcommittee to formulate concrete measures to upgrade the capacity of the elderly in integrating into society. In the area of health care needs, both reports concur that the procedure for application for medical fee waiver has to be improved. Furthermore, both reports agree to further alleviate the burden of medical fees on the elderly, only that they are divided on the scope of benefits and how far the burden should be eased, and hence further negotiations are required. In the area of financial needs, to expedite the offer of financial protection for the future elderly has also become a subject of common concern. Though the proposals of the two parties might differ, discussion in the community can still be promoted as the proposals are based on a common concern.

While the common grounds of the two reports can be implemented expeditiously, it does not mean that the Government can ignore the remaining parts of the reports because of their different conclusions. Some excellent proposals in the report of the Subcommittee, such as studying the feasibility of reverse mortgage, are not included in the report of the Commission. In the past, the relevant issue has been raised in this Council for discussion. However, the Government's attitude was that reverse mortgage was a market practice and should therefore be decided by the market. But obviously, reverse

mortgage services are not popular in the market at the moment. However, in view of the ageing population, I believe there will be enormous demand for reverse mortgage in society. If the trade cannot provide such services, the Government should promote the development of such services and even encourage bankers to support the growth of reverse mortgage services in the form of social enterprises. After all, reverse mortgage is not purely a profit-making business. It involves a sense of security and financial protection for the elderly. The Government cannot shirk its responsibility simply on the excuse that it is a market practice.

Deputy President, the relaxation of the restriction for elderly CSSA and OAA recipients who choose to live out their lives in retirement back in their hometowns is not mentioned in the report of the Commission. However, the needs in this area are the common wish of a large number of elderly people. Judging from the degree of integration between China and Hong Kong, I think the Health, Welfare and Food Bureau should adopt a broader way of thinking. Requiring the elderly to travel long distances between China and Hong Kong in order to comply with the requirements of the CSSA and OAA is not a "people-based" approach.

Last week, the Gini Coefficient published by the Census and Statistics Department reflecting the disparity between the rich and the poor in the territory reached a record high of 0.533. The Commissioner for Census and Statistics explains that the widening of the Gini Coefficient is attributed to the increase in the number of single-elderly households. The Commissioner's remark has indeed explained the existing social conditions. The ageing population has become a problem that might intensify social conflict. To provide proper services for the elderly has now become a pressing issue that can brook no more delay. I so submit.

MISS CHAN YUEN-HAN (in Cantonese): Deputy President, I am a member of the Subcommittee to Study the Subject of Combating Poverty. I rise to speak here to make it clear that the FTU supports the entire report..... sorry, I have not put on my microphone. I will start all over again.

DEPUTY PRESIDENT (in Cantonese): Would you please clip your microphone on your coat. I suppose Members are aware of this rule.

MISS CHAN YUEN-HAN (in Cantonese): OK, Deputy President. Twenty minutes have already passed. Deputy President, I am a member of the Subcommittee to Study the Subject of Combating Poverty. I rise to speak here to make it clear that the FTU supports the recommendations contained in the entire report and hopes that the Administration can consider the original motion today and implement all the measures and recommendations put forward in the report.

Deputy President, following two previous reports, namely the Report on Working Poverty and the Report on Women in Poverty, the Report on Elderly in Poverty is the third one presented by the Subcommittee. Actually, compared to the two categories of people mentioned in the two reports, namely wage earners in working poverty and women in poverty, the livelihood and situation of elderly in poverty is even more worrying. Why? Because wage earners in working poverty and women in poverty are still capable of working. If the Government is really determined to resolve the problems of working poverty and women in poverty, a number of initiatives, such as imposing a minimum wage as a means to provide basic protection, can be adopted to create more economic elements to widen the scope of job-seeking, and so on. Frankly speaking, these people can naturally get rid of poverty if these initiatives are implemented. Yet, they are still living in hardship for no action has yet been taken by the Government.

In comparison, however, the elderly are no longer capable of working. Frankly speaking, people will often become less capable as they grow old. However, we can actually see some elderly people, despite their old age, still have to perform such backbreaking jobs as collecting cartons in order to make a living. These people are supposed to spend their twilight years happily after retirement. However, if their children cannot support them for various reasons, very often they can only rely on the Government and thus live in hardship.

Deputy President, the Gini Coefficient of the territory recently published by the Government has once again demonstrated the disparity between the rich and the poor. The latest figure of 0.533, representing a wider gap over 0.525 in 2001, shows that the disparity between the rich and the poor in the territory has further widened. Actually, despite the economic revival of Hong Kong in recent years, the quality of life of the grassroots can still not keep pace with the economic upturn. Neither can the grassroots enjoy the economic benefits. Very often, we can see that (as pointed out by a Member earlier) working poverty of the grassroots is marked by long working hours and low wages.

Generally speaking, an hourly-rated employee working 12 hours a day can earn only \$4,000 to \$5,000 a month, or \$6,000 for those who are better paid. Frankly speaking, it is often extremely tight for one to support a family of several members with such a meagre salary. It will be even harder for him to support the elderly in the family as well. Actually, from what we have seen in the districts or heard from groups coming before this Council, we have often found that such circumstances do exist. How can one earning a monthly salary of \$5,000 to \$6,000 or a bit more support so many people? On the other hand, elderly people living in such hardship will naturally think hard to help address the hardship faced by their family. As I pointed out earlier, many senior people might perform such jobs as collecting cartons, doing part-time jobs, and so on.

Under such circumstances, coupled with Hong Kong's ageing population, it is predictable that such circumstances will only worsen. I am saying this because these elderly people we can see at present are Hong Kong citizens who made enormous contribution to Hong Kong during the post-war period. For various reasons, however, they still have to live in object poverty after retirement. If a retirement protection scheme was already in place at that time, or they were at least guaranteed some sort of protection, their livelihood would have been somewhat better. But now, they have nothing at all. They will live in even greater hardship if the financial positions of their children are not good. Furthermore, some elderly singletons without children are also living in hardship. Very often, the Government should be able to see what we have seen. Actually, a good retirement life requires a Mandatory Provident Fund (MPF), personal savings and a safety net provided in the form of social welfare, as proposed by the World Bank as the criteria. Actually, the Government agrees that what is provided in this area is not enough. In particular, it is evident in the present circumstances that not enough has been done to alleviate elderly in poverty.

This is my point of view: No one dares to say that the MPF at present is OK when it comes to helping low-income earners at work in their future retirement life. I can almost assert that they will follow in the footsteps of the poor elderly today. The conditions of those poor elderly who have already retired are even worse. Even low-income earners who started to contribute to the MPF in 2000 would not get much better when they retire eight or 10 years later. Furthermore, housewives are excluded from the MPF. In the face of such circumstances, if our unanimous hope is to resolve the serious problems caused by the ageing population and elderly in poverty, the Government needs to

consider..... I am aware that the Central Policy Unit has been conducting some studies since more than a year ago, though their findings have not yet been presented to this Council. Given the Government's awareness of the existence of the problems or, in other words, the need to seek a way out of the existing conditions, I hope the Government can really present the findings of the studies to this Council early.

Deputy President, despite what was pointed out by me earlier, I still wish to emphasize one more point that if accrued benefits are offset several times by the retirement protection authorities, even those who are earning a monthly salary of \$7,000, \$8,000 or \$10,000 would possibly become poor elders in the end. Therefore, universal retirement protection is urgently needed.

The next issue I wish to discuss is the health care of poor elders, an issue discussed in a meeting held by the relevant panel the other day. Health care is a subject in which the Secretary is well-versed. Naturally, people will suffer from illness more frequently when they grow old. While elderly CSSA recipients may obtain free public medical services, what about those elderly who are living on the brink of poverty? What about those elderly CSSA recipients who have to consult Chinese medicine practitioners? All these issues warrant careful consideration on the part of our community as a whole.

For these reasons, Deputy President, we fully support the original motion proposed by Mr Frederick FUNG today. As fully explained by Mr WONG Kwok-hing earlier, we will not support the proposal raised by the Liberal Party concerning what should not be considered.

MR JAMES TIEN (in Cantonese): Deputy President, insofar as helping the poor is concerned, be they the elderly, the unemployed or single families, the Liberal Party has always believed that resources in the community must be effectively utilized. In short, we will help the needy. However, it does not mean that we will help every one of those falling under the abovementioned categories.

In the past two years, I have joined the Subcommittee to Study the Subject of Combating Poverty of the Legislative Council and the Commission on Poverty

set up by the Government. The Liberal Party has also set up a poverty alleviation fund. During these two years, the Liberal Party has helped dozens of elders because either the Government has failed to offer help to them or other organizations cannot give them assistance. The things we have bought them include hearing aids, washing machines, electric fans, refrigerators, cooking utensils, and so on. In my opinion, we have really honoured our words. We have really helped needy elders and done something for them.

Deputy President, Mrs Selina CHOW has earlier stated on behalf of the Liberal Party our three reasons for objection. Just now, I heard Mr WONG Kwok-hing seem to suggest that the proposals we make in our amendment are absurd and incomprehensible. As I am not prepared to respond to this point in my original speech, I would like to invite Mr Jeffrey LAM to respond to the speech made by Mr WONG Kwok-hing with respect to Mr Frederick FUNG's original motion. I hope Mr WONG can understand that sometimes it will be easier for him to understand what he finds puzzling by looking at the matter from angles other than the perspective of the labour sector.

Deputy President, the Liberal Party has reservations about six of the proposals in paragraph 5.1 of Chapter 5, and we have stated this clearly in our paper. In this respect, though we have not raised objection, I would like to explain why we have reservations about three points. The first point is (b), concerning the review of the absence limit. In the opinion of the Liberal Party, the absence limit is already quite loose, for it has now been relaxed to not more than 240 days. In other words, elders are not required to be physically present in Hong Kong for eight months in a year. We see no need to further relax it to, for instance, 300 days, or grant relevant benefits to those who are virtually not living in the territory.

In paragraph 5.1(f), it reads "consider providing medical treatment at public hospitals and clinics to all elderly at half-price". May I draw Members' attention to the word "all". As I explained earlier, resources in the community are limited. Are we promoting pan-welfarism by providing welfare to all elderly? Under such circumstances, does it mean that all elderly, whether rich or poor, will be charged half-price? If this is really so, we do not think it will work. On the contrary, we think that needy elderly should receive more assistance. At the same time, benefits should not be given to the well-off elderly. By the same token, we have reservations about paragraph 5.1(g) too.

Regarding the proposal of setting up public Chinese medicine clinics (CMCs) and dental clinics in all the 18 districts in Hong Kong, we think that it is advisable to set up CMCs and dental clinics in districts with a high proportion of elderly population only, but not in all districts.

In paragraph 5.1(h), it is proposed that subsidies be provided to elderly before CMCs and dental clinics are set up in all 18 districts in Hong Kong. As all elderly will receive subsidies under this concept of providing subsidies for elderly regardless of their means, we have reservations about this point.

In paragraph 5.1(o), the Subcommittee recommends the Government to provide direct subsidies to the elderly and allow them to choose the types of residential institutions which best suit their needs. Of course, we agree that more residential care home for the elderly (RCHE) places should be made available to shorten the waiting time of the elderly. However, in providing direct subsidies to the elderly, we consider that the subsidies should be provided depending on the financial positions and actual needs of the elderly, not regardless of their financial positions. There are a large number of RCHE places in Kowloon Tong too. Should those living in luxury mansions in the district be subsidized to live in the RCHEs next door? In our opinion, it is unreasonable to provide subsidies to all elderly across-the-board.

Finally, in paragraph 5.1(x), it is proposed that a transport subsidy be provided for the needy elders to encourage them to participate in activities in the community. May I draw Members' attention to the term "needy", which means that not all elders will be subsidized. So, why do we have reservations about this point? This is because of the expression "activities in the community". It would be very difficult for us to assess whether the elderly will really participate in activities in the community after receiving the transport subsidy. Nevertheless, insofar as this point is concerned, the Liberal Party has always encouraged public transport to provide the elderly with transport concessions to make it easier for the elderly to integrate into society. This is the point I wish to clarify further.

Generally speaking, Deputy President, the Liberal Party has always agreed that we should help those who are most in need in society. However, we do not support the approach of distributing money to everyone, regardless of their financial positions. In our opinion, this is a pan-welfarism approach, because this is definitely not the way to effectively utilize public money.

It is indeed necessary for the Government to first examine some of the mechanisms to identify how many of the 850 000 elderly aged above 65, excluding the 163 000 elderly CSSA recipients, are living in hardship because they have not applied for CSSA and are in real need of us doing something for them. We can then pool our strength to provide these elders with assistance. This is the most reasonable approach. By "pooling our strength", it is meant that more subsidies will be provided, as the request made in the report. We will support this.

This approach is not only compatible with the effective utilization of resources in the community, it can also give the business sector the impression that the tax paid by it can really help the needy. Thank you, Deputy President.

DR YEUNG SUM (in Cantonese): Deputy President, the Democratic Party supports Mr Frederick FUNG's original motion because the content of the Report on Elderly in Poverty happens to coincide with the Democratic Party's elderly policies. Furthermore, the positions of the Report and our policies are quite consistent.

According to the latest census, Hong Kong has overtaken Japan to top the world's longevity ranking, with the average life expectancy of males and females standing at 79 and 85 respectively. Following the change in the economic conditions in recent years, there are more than 960 000 elderly aged over 65 in the territory at present, with some 30% of them living in poverty, I repeat, Deputy President, with 30% of them living in poverty. With the rapid ageing of the population in the future, one in every four people in the territory will be over 65 years of age by 2032. The situation is indeed worrying.

There have been persistent calls from us for the Government to raise the OAA and offer the elderly with half-fee medical concessions, so as to alleviate the hardship faced by the elderly in their daily life. Recently, we have collected from the community more than 10 000 signatures from the elderly. During the past weekend, some 200 elderly marched to the Government Headquarters under the scorching heat of 33°C to appeal to the Government to basically allocate more resources to the elderly by raising the OAA for the elderly on the one hand and lowering the medical charges for the elderly on the other.

Given that the Government has been able to offer civil servants a substantial pay rise as a result of its abundant fiscal surplus this year, why does it not consider reviewing the existing amount of OAA of \$700 and offering half-fee medical concessions to the elderly? The persistent failure to ameliorate the poverty problem has brought shame to Hong Kong in the international community. In scrutinizing the implementation of the International Covenant on Economic, Social and Cultural Rights in 2002, the United Nations expressed active concerns about the poverty problem in Hong Kong. As a signatory of the Covenant, Hong Kong is absolutely obliged to alleviate the problem of elderly in poverty expeditiously.

It has been a decade since the reunification of Hong Kong with China. How appealing it was when the first Chief Executive, TUNG Chee-hwa, delivered his political platform proposing to cultivate "a sense of security, worthiness and belonging" among the elderly. But unfortunately, today we still have tens of thousands of elders living in poverty and struggling to survive in such districts as Kwun Tong, Sham Shui Po and Yuen Long every day. It is therefore a matter of great urgency for the Government to lend them a helping hand. Financial problems aside, the elderly are also extremely worried about rising public medical charges. While elderly CSSA recipients certainly do not find this a problem, those elderly who are ineligible for CSSA because of their income will only refrain from seeking medical treatment. The \$200 charges levied by the casualty department and observation ward will also produce a substantial deterrent effect on the elderly. Given its present financial strength, more than 600 000 elderly can already be benefited if the Government is willing to forego \$400 million in medical revenue.

On the other hand, Deputy President, we very much agree with the proposal of the report to study — we are only talking about studying, not immediately implementation — the provision of universal retirement protection. Such protection can plug the existing loophole of the MPF of failing to provide protection for housewives and part-time employees to ensure that they can receive proper care when they grow old. Moreover, a number of surveys have found that accommodation is a matter of the greatest concern to the elderly. However, elderly people in general dread living in homes for the aged for fear of inadequate supervision and varying standards of service. At present, the number of private homes for the elderly represents 70% of all the homes for the elderly in the territory. With limited deterrent effect, the existing code of practice for homes for the elderly is by no means law. It is therefore hoped that government supervision can be stepped up.

As regards the proposal of allowing the elderly to submit individual applications for CSSA, it is vitally important that their assets should be calculated separately when they apply for CSSA. Deputy President, a family-based policy is being implemented at present for the sake of encouraging children to support their parents. However, a number of elderly people are not supported by their children, though they are living under one roof. If the elderly wish to apply for CSSA, they must submit a written consent by their children before their applications will be considered by the Social Welfare Department. Therefore, it is a matter of great urgency for the Government to allow the elderly to apply for CSSA on an individual basis on account of their financial conditions.

Furthermore, Deputy President, I still wish to say a few words on elderly care.

In the light of the worsening problem of ageing population, there has been a rising demand for subsidized residential care home for the elderly (RCHE) places. However, the number of applicants on the waiting list has continued to hit new heights as a result of the Government's constant slashing of welfare expenditure in recent years. Information reveals that the queues for RCHE places have continued to lengthen, ranging from nine to 38 months. Many elderly people have already passed away before they are allocated a place. The extended waiting period is torturing the elderly. We demand that the waiting period be shortened to within a year, just as the waiting period for public housing must not exceed three years. I hope the Secretary can make this clear to his successor and give us performance pledges so that the elderly will not be required to wait a long period before they can be admitted.

Deputy President, social progress hinges not on how much wealth is owned by the richest person or the annual Gross Domestic Product, but on whether the most disadvantaged or the poorest receive due social care and attention.

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

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, recently, my ward office organized an activity and some elderly people took part in it. Among them, an elderly women surnamed CHAN had a chat with me. She did not look very old and my conjecture was that she was in her sixties. However, on talking with her, I learned that she was already in her eighties.

In our chat, she made one remark which made me feel very sad and depressed after hearing it. She said that she did not want to live too long. When I asked her why, she said that living too long was only a kind of torment. She said that when she was young, she toiled together with her husband. Subsequently, her husband passed away. Her children have now grown up with families of their own. Their income was only enough for meeting their own daily expenses and they could no longer support her financially. She had lived on the estate of her husband for over a decade and spent nearly all of it. She was in her eighties and could not work, so she had no alternative but to apply for CSSA from the Government. However, given the present level of CSSA, it is really difficult to scrap by. When she was ill and wanted to see a doctor, in respect of health care, making an appointment for consultation is a fairly complicated matter and we have discussed this matter continually in the legislature. Many elderly people cannot make an appointment successfully. What can they do? They may have to consult doctors in private practice, so she believes that nowadays, the longer one lives, the greater the torment.

Deputy President, this is in fact true because if one does not see a doctor about minor illnesses, they will of course develop into major ones which can of course kill. The logic is very clear. However, if they cannot make an appointment, do not want to consult a doctor in private practice and just let the condition drag on and build up, what a miserable state of affairs this is!

In fact, among the problems encountered by the elderly, poverty is a major problem. Many Honourable colleagues have mentioned that the ageing of our population is becoming very serious. Not only that, the situation of the elderly in poverty is also very serious. Since an increasing number of elderly people cannot save much by the time they are about to retire or they used to not work at all, this has given rise to a very serious situation of poverty. I remember that the Commission on Strategic Development has also discussed this problem. The number of elderly people with a monthly income of less than \$4,000 was only some 85 000 in 1996, however, how many were there in 2006? There were more than 187 000 persons, so one can see that the figure is rising and the situation is very serious.

Therefore, I think that nowadays, we really have to consider how this problem can be solved. On the problem of elderly in poverty, at a higher level, it is not just a problem of elderly in poverty but also a problem of whether the

elderly can lead a life of dignity in their old age. Mr James TIEN said just now that in principle, he did not object to the many recommendations made in the report of the Subcommittee, however, if all the measures had to be taken, he felt that it might be a waste of public funds, that if they were not directed at people in need and all people were eligible, this may not be desirable.

Deputy President, in any event, I think that as society's recompense to the elderly, it is not necessary to make only poor people eligible. In fact, any elderly person has the right to receive such recompense. Whether they want to receive the benefit is another matter. This is just like the Old Age Allowance (OAA), otherwise known as the "fruit grant", which all people over 70 years of age are eligible to receive irrespective of their means. This is a kind of respect for the elderly and gives them dignity. In fact, the elderly have made a great deal of contribution to society in the past, so we should requite them. Whether or not they want to receive the benefit is another matter.

For example, when Mr James TIEN is 70 years old, I think he probably will not apply for the OAA, however, he has such a right and this is a recognition of the contribution he made in the past. Therefore, this point is very important. If he only agrees to providing the benefit to people in need, I think there is still room for discussion. If we have to adopt an orderly and gradual approach and take care of people in need first, I will not object to dealing with this matter slowly by waiting until there are the resources in society. However, if we do not do so even in the long term, I will not agree with this as a matter of principle. As I said just now, as we want to give the elderly dignity and recompense, therefore, I think everyone should be equally entitled to such a right.

On the problem of poverty, Deputy President, the most important thing at present is that the Government often relies heavily on the Mandatory Provident Fund (MPF) and this has led to a major problem that has been the subject of our discussion all the time. Deputy President, I believe you are also aware that the MPF puts two types of people at the greatest disadvantage, one being people who began to make contributions only when they were close to retirement. Even though they have made contributions, it is of little use. This is the first type of people. The other type of people is women. It is not true that they do not hold any job. They work only for the family, and they work round the clock, only that they do not make any contribution to the MPF. In the end, when they are old, they can only ask others for money, however, they do not ask the

Government or the MPF but their husbands and children for money. When these women cannot get any money from the latter two, they apply for CSSA from the Government. This problem has existed for some time.

Therefore, if we still rely on this existing mode called the MPF, it is not possible to take care of this group of people. In view of this, we must put in place universal retirement protection. In this way, each person will have equal opportunity and receive the same amount of money, so that they can enjoy protection in living. I hope each person will receive the same amount and there will not be any difference, so that their standard of living can be assured. This is what we hope for and demand. We hope very much that the Secretary can raise this matter with the secretary who takes the rein from him because the new team has stressed that it will handle matters in future with professional pragmatism and commitment. I hope they will really do so. (*The buzzer sounded*)..... Deputy President, I so submit.

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

DR KWOK KA-KI (in Cantonese): Deputy President, before all else, I wish to thank Mr Frederick FUNG for moving this motion today. His Subcommittee has done a lot on the problem of elderly in poverty.

A sense of security for the elderly used to be an important area in the policy addresses of the SAR Government, however, for unknown reasons, after several years, this slogan was no longer mentioned in the policy addresses of the Government and there are two possibilities for this: first, basically, the problems relating to the elderly (including the problem of elderly in poverty) have perhaps been solved and second, the Government perhaps does not have any more new plan for the problem of elderly in poverty. Of course, if it is said that the first possibility is the reason, I think no one would believe it because if it were, there would not be so many people petitioning outside the Legislative Council Building today. Moreover, various political parties have come forward to demand that we take on board the recommendations made by the Subcommittee to Study the Subject of Combating Poverty concerning the various facilities for assisting the elderly in poverty.

Just now, a number of Honourable colleagues have pointed out that if we look at the past decade, basically, the care and attention that the elderly receive from society have not increased in any way in Hong Kong. Certainly, the Government will cite a string of figures, including the financial support, health care and welfare provided to the elderly. However, all of us know that in Hong Kong, the number of elderly people is on the increase and it will increase from the present 12% or 13% to 20% in the future and by 2033, it will even increase to 25%. In the face of such a high figure, is what we are doing now adequate?

First, I wish to talk about financial assistance. At present, the major financial assistance consists of the social security scheme and the MPF. Today, in the next debate, we will talk about the MPF. Basically, the MPF is definitely of no use to the majority of Hong Kong people in meeting their needs in old age. The usefulness of this scheme to the elderly or future retirees is probably very limited, but to people in the financial sector, it has created a very large market, if this is not the case, there is no need for us to discuss the lowering of management fees because a lot of money has been gobbled up by them actually.

However, the Government has totally disregarded the inadequacies of the MPF and also the failure of the CSSA Scheme to assist many people. To take the CSSA as an example, if the members of a family are unwilling to declare all their assets voluntarily and admit that they cannot support the elderly persons in their family, basically, the elderly persons concerned cannot do anything or apply for CSSA on their own. No matter for how long we have discussed this matter in the Legislative Council or how many elderly people have demanded a change to this Scheme, the Government still behaves as though it has not heard anything and it is still unwilling to change the application arrangements under this Scheme.

Many organizations have also said that setting up a protection scheme will not be difficult. At present, people from various quarters have joined together to campaign for the establishment of a long-term pension scheme. If the Government is willing to activate this scheme, in the future, this scheme will surely be superior to the MPF schemes. However, the Government has not done so. Is this scheme something new?

Our neighbouring regions such as Japan, Europe, the United States and Canada have all implemented such schemes. To take Japan as an example, the

retirement scheme there is government-led and the government has also injected part of the funds. It is certainly far better planned than the existing schemes in Hong Kong. In fact, if elderly people are not independent, including having independent financial support, many problems will arise.

At present, in providing CSSA, there is one area in which the Government has done a very poor job, that is, apart from creating difficulties for some elderly people in making applications, there is also a stigma that makes many elderly people reluctant to apply for CSSA in spite of their impoverished circumstances. Even some elderly people in their seventies or eighties would rather scavenge for cartons and junk than apply for CSSA. However, is this a good sign? Has our society become so very indifferent? Even in our treatment of these elderly people, we still want to pose hurdles to prevent them from getting the care they need. They have to choose either to receive CSSA by giving up their dignity or they have no alternative but to work for a meagre income, for example, by scavenging for cartons. Are these the goals that we want to attain in our quest for a just and caring society? Of course not.

The second point is about the provision of health care services to them. Recently, the Bauhinia Foundation Research Centre said that the Government had plans to — not the Government but the Bauhinia Foundation Research Centre — had plans to set up contributory funds to help elderly people over 65 years of age meet long-term hospitalization and health care expenses. Many elderly people have really become jittery and sleepless on hearing this. Why? Does it mean that if this plan conceived by the Bauhinia Foundation Research Centre is really implemented (as we all know, it is called the think-tank of the Government and its chairman has taken up the office of the Director of Chief Executive's Office), elderly people will have to shoulder the cost of a great number of public health care services through their accounts? Is doing so fair? We may not necessarily agree that total exemption should be granted to all elderly people and we may not agree with providing full subsidies to them regardless of their means. However, it is certain that we should not impose a heavy burden on the elderly.

Members may have noticed that recently, many problems relating to hospitalization actually cannot be solved and there are a lot of patients who cannot leave the hospital. The main problem is that the Government does not

have adequate and better after-discharge services such as subvented residential care homes and day care services, so that they can leave hospital with peace of mind. Therefore, if the Government still deals with the problems of the elderly with a piecemeal and one-sided approach without an overall direction, the burden borne by health care services will only increase. I hope all Honourable colleagues can accept and endorse this report prepared by the Subcommittee.

I heard Mr James TIEN say that the Liberal Party was quite nice in that it had offered assistance to several hundred people, however, I hope that apart from offering assistance to several hundred people, it can also endorse..... it should be several dozen people, right?..... endorse this report because doing so can actually help a lot of people. Of course, I will not decline or object to helping several dozen people, however, I call on him to support the motion (*the buzzer sounded*).....

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MS AUDREY EU (in Cantonese): Deputy President, on behalf of the Civic Party, I speak in support of Mr Frederick FUNG's motion and the Report of the Subcommittee and oppose the amendment proposed by Mrs Selina CHOW of the Liberal Party. When Mr James TIEN spoke just now, he objected to three points in the report of the Subcommittee because he is concerned that the proposals will become welfarist. I believe the Liberal Party is very good at figures. In fact, this is not a matter of welfare because we only have to look at the figures to see that we are facing a realistic problem.

A number of Honourable colleagues have already mentioned the first set of figures. We can see a latest figure that have surpassed those of western countries, namely, the Gini Coefficient reflecting wealth disparity in Hong Kong has reached 0.533. The second set of figures has also been mentioned by some Honourable colleagues, namely, according to the Social Welfare Department, between 1996 and 2003, the number of elderly people on CSSA rose by 50%. Concerning the third set of figures, some Honourable colleagues have also mentioned it, namely, concerning the problem of an ageing population, by 2033, there will be one elderly person in every four Hong Kong residents and the

dependency ratio is one member of the working population to four elderly people.

I wish to mention in particular another set of figures and this is also something that I particularly wish to talk about in this speech, namely, the issue of women in poverty. In fact, we can see that at present, over 85% of elderly scavengers are women over 70 years old. In a study commissioned by the Hong Kong Council of Social Service and conducted by The Chinese University of Hong Kong, it was found that 80% of the elderly women lived with their families rather than alone. However, since their family members do not support them financially or are in straitened circumstances themselves, the elderly people in these families have to scavenge for cartons to get by and half of them earn only several hundred dollars a month. It can thus be seen that even though these elderly people live with their family members, the majority of them have difficulty getting by due to the insufficient support provided by the Government to the family. This is also why one recommendation in the report of the Subcommittee is to review and relax the requirement for elders to apply for CSSA on a household basis. Therefore, I find it most regrettable that the Liberal Party cannot support this recommendation.

In fact, overseas and local academic institutes have all pointed out that a global trend of elderly women in poverty has emerged and I think this problem is particularly serious in Hong Kong. The life expectancy of men in Hong Kong, at 79.5 years, is already longer than that of other places and the life expectancy of women, at 85.6 years, is even longer. Deputy President, you are also aware that the tenacity of women in this regard has always been particularly outstanding, however, when they do not have work — even if they used to hold jobs, they still have to continue to support their own living for a long time after retirement — if the task of poverty alleviation is not done properly, ultimately, this will impose a greater burden on society.

Since the two sexes are generally stereotyped in society, women usually become home-makers. Regardless of their social class, most of them in fact do not hold any job, therefore, the MPF cannot help them in any way. The Government pointed out in 2004 that the overall utilization rate of health care services by elderly women was double that of men. In other words, although women are not covered by the existing health care and retirement schemes, it is precisely women who account for the larger part of the health care expenditure.

Therefore, it is necessary for the Government to formulate a long-term policy and give consideration to a universal retirement protection scheme, carry out consultation on it and implement it as soon as possible. Thus, I also find it very regrettable that the Liberal Party does not support this recommendation in the report of the Subcommittee.

Hong Kong has transformed into a city of international finance and of the service industry, however, behind the economic prosperity, we can see that women who had contributed to the Hong Kong economy in their quiet ways were forced into unemployment due to the relocation of factories across the border since the '80s. Women who switched to other jobs were often compelled, on account of various reasons such as their age and qualifications, to take up low-skilled part-time or casual jobs and join trades offering little protection such as cleaning, or to leave the labour market altogether and become full-time home-makers. It is in fact also necessary for these women to benefit from various social measures so that they can be cared for in their old age.

As there are also more and more nucleus families and childless families, the number of single elderly will also rise continually. Coupled with the fact that women are at a more disadvantaged position in society, the Government should implement corresponding measures as soon as possible. For example, it should consider lowering the age at which women can apply for OAA. This measure should be implemented as soon as possible. Neighbouring regions such as Singapore have already lowered the age at which women are eligible for applying old age allowance to 60 years.

On home care, it is often housewives who take care of the chronically ill. Generally speaking, society is inclined towards caring for the elderly at home and in the community. However, what is sorely lacking now is precisely support for these families. There are few day-care facilities and they are unevenly distributed. Financial support for these families is also inadequate. A study pointed out that the utilization rate of health care services by the elderly is 80% higher than that of other people in general. With no government subsidy whatsoever for the family, this will exert great financial pressure on the great majority of members of the public.

A study conducted by the Hong Kong Polytechnic University in 2004 indicated that over 70% of the people who took care of chronically-ill elderly people were women. After taking care of others for some time, most of them

also suffered from a lot of ailments such as headache, shoulder pain, aching joints and this also created a burden for health care.

Therefore, without the provision of health care subsidy, a vicious circle is often created, adding fuel to the fire. Until the fuel has burned out, the fire will not go out and the problem will not disappear on its own.

The Government has stressed that there must be harmony in society, however, for a society to be truly harmonious, it is necessary to create a society in which the elderly can have security and the widowed, the single and people with disabilities are all cared for. Therefore, in this regard, I hope the Liberal Party will not just consider helping several dozen or several hundred elderly people (*the buzzer sounded*)..... but will consider the issue holistically. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, my mother is a woman. In this world, who was not born by a mother? From the speeches given by many Honourable colleagues, we can understand the consequences of elderly in poverty. Among the elderly people living in poverty, many of them are women who are mothers or who used to be someone's wife.

In this society, no attention or scant attention is given to this group of people and only the CSSA Scheme was put in place perfunctorily. Do Members know what CSSA is? There are several types of assistance under the Scheme and five types of assistance are combined into one. How much is the amount altogether?

In fact, it is rather ironic that this issue is being discussed now. We know that when Mr TUNG Chee-hwa took office, he said that he had to take care of the elderly and an Honourable colleague of ours also used to be the Chairman of the Elderly Commission. Mr TUNG once made the grand promise that not only would the elderly be cared for, they would also be able to feel a sense of worthiness. However, what are the elderly now preoccupied with?

This morning, I met an elderly person on my way to work. That person was not a woman but a man. He was rummaging in a rubbish bin. I noticed that a housewife who was waiting for the lift together with me was gazing at him with scorn, as though saying, "Why is he rummaging in the rubbish bin? He is making such a mess." In fact, that elderly person was very well-behaved and he did not make a mess of the place. Just imagine: Why did this elderly person get up early in the morning to look for items in a pile of rubbish? Precisely because he is poor.

Our topic of debate today is elderly in poverty. Let us look at what the Government has done. Let us not look at anything else but at the so-called MPF conceived by the authorities as a long-term plan. The first crucial thing about the MPF is that it is not a kind of protection for retirees or elderly people and it is only designed for people who are working. Let us not talk about the problems relating to the MPF back in those years. Back then, out of the fear that employers would not give their nod and that there would not be enough votes, it was proposed that the MPF could be offset, as a result, everything was offset. Let us not make a reckoning of this now.

I wish to ask one thing: Given that the management fees of the MPF schemes are so high, after offsetting this and that, how much will actually be left? For an old man who loves his wife dearly, after he has received the MPF payment, will it be adequate for his own use or for his wife's use? From this point alone, we can see that with the reluctance of both the Government and the business sector to revise the MPF System, this System will not be able to provide comprehensive protection to retired elderly people. Therefore, it is unjustifiable not to change the MPF System to an old age pension system.

I heard Honourable colleagues of the Liberal party ask this question. Since this was not how things were like initially, if reforms were proposed now and people contributing to the MPF had to fork out half of their contributions to put in place the new arrangement, would doing so not be unfair to these people? This would probably be unfair because initially, they had no idea that the contract would be like this. However, I have to ask one question. Are they really such cold-blooded people? If they fork out half the amount, they themselves can still have about \$3,000 to live on in old age, so will they disagree with this? This is totally unjustifiable. This issue has been discussed for more than a decade but the Government has never carried out any comprehensive consultation, instead, it just lets elderly people go on suffering.

When our Chief Executive indulged in talks about the population policy and called on the public to give birth to three children, had he ever thought about the fate of these elderly people who had provided cheap labour to Hong Kong or who had made it possible for some people to scale from the lower segments of society to become elites? If they are fortunate enough, their children probably have more income and they are probably better off. However, the children of a large group of women have created massive wealth for this society but even their children cannot get a share of this wealth. As a result, these women have no one to rely on in their old age, or their children cannot support them but they are unwilling to declare that they are incapable of supporting their parents. However, some people are still lauding such a system.

If an old age pension system is implemented, it will become a kind of welfare and just like people under the sunshine, everyone will be able to bathe in it and the problem will no longer exist. Let us not talk too much about profound theories. An old age pension scheme will only take 3% of the income from the rich and let everyone share it. Why would this not work?

In fact, our society has been too good to them. If a property developer could earn more than \$50 billion in two years and said that it had been so fattened that it could not even put on the socks; if some consortia have earned so much that they are grinning from ear to ear and dribbling and since they have also earned a great deal in the stock market lately, why can they not fork out 3% of their income? Other people also have to fork out 3% and this is not progressive. Therefore, I cannot agree with the amendment moved by the Liberal Party, nor the comments made by it. These only prove that they are rich but mean.

I hope the Government can study this problem, however, it is a pity that the Commission on Poverty has wound up because Secretary Henry TANG has been promoted, so there is no need for him to use this toy to win popular support. Such is the ugly face of small-circle elections. I know that the elderly cannot find time to join the 1 July rally, but I hope their children can come out and join the 1 July rally.

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, your speaking time is up.

MR LEE CHEUK-YAN (in Cantonese): Mr LEUNG Kwok-hung said just now that the elderly would have no time to join the rally on 1 July; in fact, they have a lot of time, and they will definitely join it because the rally this year will be led by them. Therefore, I call on elderly people to join the rally on 1 July and they can take the lead. However, Deputy President, I think that today's motion on elderly in poverty..... The Subcommittee to Study the Subject of Combating Poverty prepared a report and made many recommendations to the Government. However, what I find most disappointing about the Government is that, as Mr LEUNG Kwok-hung said just now, after the term of the Commission on Poverty (CoP) has expired, no one is paying any heed anymore. However, even before the term of the CoP had expired, what we said had already become history. At that time, the term of the CoP had not yet expired and its Chairman was Henry TANG. It is a pity that he is not here today. Even though he is still the chairman of the CoP, Deputy President, we find one point disappointing and wish to ask the Secretary this question. On the problem of elderly in poverty, did the CoP ever implement a single recommendation to alleviate the poverty experienced by the elderly?

To people with low income, the Government has provided a cross-district transport subsidy. Although we are not happy with the details, anyway, a cross-district transport subsidy is now available. There is a Child Development Fund for children. But in respect of the elderly in poverty, the CoP has not delivered anything at all.

This group of elderly people accounts for a large proportion of the poorest people in Hong Kong. Members can take a look at the information on the income distribution of households in Hong Kong, which I have just obtained. It is "oven-fresh" and there is an analysis therein on the poorest 20% of families in Hong Kong. The median income of these families is only \$4,200 and among the poorest 20% of people in the population, 30% of them are elderly people over 65 years of age. This report points out in particular that among the poorest people in the population, elderly people account for a fairly significant proportion of them. The words used are "fairly significant", however, in fact, it should not just be "fairly significant" but "particularly great". Among the poorest 20% of people in the population, 30% are elderly people. Furthermore, in the 30% to 80% of people in the population who are comparatively speaking better off, elderly people account for only 9.3% of them. Among the richest people in the population, elderly people only account for 6.6% of them, whereas among the poorest people in the population, elderly

people account for as high as 30% of them. Therefore, Members can see from these figures that elderly people in poverty is in fact the most serious aspect of the problem of poverty in Hong Kong. Of course, Members will probably think that the situation of the elderly in poverty is a social phenomenon resulting from the inability of elderly people in finding employment in society and the absence of pension after retirement. Hence the elderly in Hong Kong are really poor and some of them have to spend their OAA frugally, whereas others may have to rely on CSSA.

However, Deputy President, have we not done too much wrong to this group of elderly people? The CoP did not put in place a single measure for them. Even such a very simple thing as the three recommendations made by us today is totally opposed by the Liberal Party. They have even stated specifically that they do not want to implement these three measures. I want to tell the Chairman of the Liberal Party, James TIEN, that these three recommendations are in fact pivotal in solving the problem of elderly in poverty. Firstly, the Liberal Party opposes a universal retirement protection scheme, however, as a matter of fact, the whole world is talking about pensions and old age pension is available throughout the world except in Hong Kong. Is our conscience clear over how we treat the elderly, Deputy President? The elderly people in Hong Kong worked in factories and construction sites when they were young and toiled for four to five decades. Why can they not receive even a little pension in the end? Some of them may be able to receive long service payment but some probably do not have any. They have nothing. They do not have any retirement protection upon retirement.

Sometimes, when I look at elderly people overseas, they are able to lead a leisurely life in retirement and if we compare them with the elderly people in Hong Kong, should we Hong Kong people not feel ashamed of ourselves? Hong Kong society is so affluent, so are we not ashamed of ourselves when facing our elderly people? They have contributed to the prosperity of present-day Hong Kong, however, in the end, we do not have any system that enables them to lead a life of dignity in retirement. Do we not find that such an approach adopted by society really shameful? Even now, the Government is still saying that it has to carry out studies. The Central Policy Unit said it had to study the issues of elderly people in retirement and universal retirement protection. However, for how many years has it been conducting the study? I have heard these people say that they wanted to conduct studies since 2000, however, so far, they have failed to hand in any homework. In this regard, we are in fact utterly, extremely and thoroughly disappointed by the Government.

I am also disappointed by the Liberal Party. Why do they not support the retirement protection that any normal society should have? They say that this is being welfarist, but are they telling the elderly to become self-reliant? Of course, they can say that elderly people should rely on their children, however, can all elderly people rely on their own children? If elderly people cannot rely on their children, that is probably because their children are also poor and cannot even take care of their own families or these elderly people do not have any children. In view of this, how can society not take care of these elderly people? How can we not "care for our own aged parents first and then extend the same care to all the aged people in general"? Why, when we say we want to give elderly people welfare benefits, do they say that this is being welfarist? It is really necessary to provide welfare benefits to elderly people. I have to tell the Hong Kong public proudly that elderly people should enjoy welfare benefits. Why can they not receive welfare benefits? They should be entitled to them.

(Mr James TIEN raised his hand in indication)

DEPUTY PRESIDENT (in Cantonese): Mr James TIEN, is it a point of order?

MR JAMES TIEN (in Cantonese): Yes. I wish to clarify the point that Mr LEE Cheuk-yan claimed was raised by me. What I said was that we should provide welfare benefits to elderly people in need. I wish to raise a point of order in this regard.

DEPUTY PRESIDENT (in Cantonese): As the speaking time for Mr LEE Cheuk-yan has not come to an end, please stop timing. Mr James TIEN, you want to clarify your remarks which have been misunderstood by him, right?

MR JAMES TIEN (in Cantonese): Deputy President, since the President has said before that it is necessary to clarify immediately and one should not wait until a Member has sat down and another Member has started speaking before one requests clarification, therefore, I have requested to make a clarification immediately.

DEPUTY PRESIDENT (in Cantonese): Mr James TIEN, I have to explain to you that if you do not understand something and request Mr LEE Cheuk-yan to elucidate what he has said, he has to make the elucidation right now. However, if he has misunderstood what you have said, you can rise after Mr LEE Cheuk-yan has delivered his speech and clarify the part of your speech that he has misunderstood.

Mr LEE Cheuk-yan, there are 56 seconds left in your speaking time. You may continue to speak.

MR LEE CHEUK-YAN (in Cantonese): Thank you, Deputy President. In fact, what I am asking is: Why are elderly people not entitled to welfare benefits? Of course, you said that only elderly people in need should be given welfare benefits, however, how should this line be drawn? Basically, elderly people throughout the world all receive welfare benefits. This is how society should basically be like and all elderly people should be given benefits. They have contributed their prime and in the end, we should assume that they may not have any money after retirement because they no longer work after retirement, so of course, they cannot earn any money. In that case, why can we not take care of all elderly people?

The second point is about the offsetting of severance payments by the MPF. If severance payments are offset by the MPF, the severance payments that workers receive are in fact all the money in their MPF accounts and they will not be able to get a cent when they retire. In demanding that the two be delinked, in fact, we want elderly people to have a better future. These measures are intended to enable elderly people to live a life of dignity. Therefore, I hope the Government (*the buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up. Mr James TIEN, do you want to clarify the part of your speech that has been misunderstood by Mr LEE Cheuk-yan?

MR JAMES TIEN (in Cantonese): Yes. Mr LEE Cheuk-yan said just now that the Liberal Party and I opposed the provision of that sort of welfare benefits to the elderly. I wish to clarify that he misunderstood what we said.

Regarding elderly people in need, we support the provision of welfare benefits to them, however, Mr LEE Cheuk-yan and other Members differ from us in that they think \$3,000 should be paid to each of the 800 000 or so elderly people in Hong Kong who are 65 years of age or older. In addition, I also want to clarify one point again. Nowhere in the world are welfare benefits handed out in the way described by Mr LEE Cheuk-yan.

MR JEFFREY LAM (in Cantonese): Deputy President, I also wish to talk about the issue of OPA. Mr LEE Cheuk-yan said just now that elderly people in other parts of the world could receive \$3,000 when they reach 65 years of age. I believe this is somewhat misleading. I believe not all countries in the world have adopted such a system under which elderly people are given such an amount of money.

Concerning the criticisms levelled by Mr WONG Kwok-hing and Ms Audrey EU at the amendment proposed by Mrs Selina CHOW, which objects to "reviewing the arrangement for offsetting the long service payment or severance payment by the accrued benefits derived from the contribution of the employers made to his/her employees in the Mandatory Provident Fund schemes", I believe they are unfair. They said frequently that they did not understand why people had to say or do such a thing, however, I also do not understand why they said frequently that they did not understand. Perhaps after they have gained a better understanding of the process and details of the discussion at that time, the concerns of various parties at that time, the deliberations of the Legislative Council and what was finally approved, they will then perhaps understand it all.

Deputy President, we all know that before the MPF was established back then, various parties were involved in a protracted and heated debate on this issue. Finally, the present arrangements were agreed upon. In fact, the Government already explained very clearly back then that allowing employers to offset the long service payment or severance payments made to employees by part of the employer's contribution to the MPF upon employees leaving their jobs was nothing new. Members can look up the past records and discussions and this will be very clear, Deputy President.

According to the long-established policy of the Government, the contributions made by employers to recognized provident funds for employees can be used to offset the long service payment or severance payment that employers are required to pay in accordance with the Employment Ordinance.

In 1995, when the former Legislative Council discussed the legislation on MPF, Members had a thorough debate on whether the MPF System should adopt this offsetting arrangement and there was also a lengthy discussion on this. Eventually, the former Legislative Council decided that this arrangement should be followed.

In fact, in agreeing to continue to adopt this offsetting arrangement initially, the Government's aim was to avoid imposing an additional burden on employers on top of the 5% contribution to the MPF, which is made for their employees. This offsetting arrangement has proved effective since the introduction of the MPF schemes in late 2000. If it is said that this has to be scrapped and things should start anew, this is tantamount to destroying the consensus reached by the Legislative Council back then, that is, the aim of putting in place such an arrangement, all of a sudden. Moreover, doing so will also increase the burden borne by employers and they will have to provide double benefits. Deputy President, I repeat, employers will be required to provide double benefits and this is not found in any other part of the world. As a result, many small and medium enterprises in Hong Kong may not be able to bear the high labour costs.....

MR LEE CHEUK-YAN (in Cantonese): I wish to seek an elucidation. I request him to elucidate.

DEPUTY PRESIDENT (in Cantonese): Are you requesting Mr Jeffrey LAM to elucidate?

MR LEE CHEUK-YAN (in Cantonese): Yes.

DEPUTY PRESIDENT (in Cantonese): Mr Jeffrey LAM, do you wish to elucidate?

(Mr Jeffrey LAM shook his head)

DEPUTY PRESIDENT (in Cantonese): Since he does not want to do so, so please sit down. Mr Jeffrey LAM, please continue with your speech.

MR JEFFREY LAM (in Cantonese): and will also gravely impinge on the existing business environment in Hong Kong. At present, we are finding ourselves in a desirable setting of recovery and I believe we should not change the existing proven systems excessively, so as to avoid affecting foreign investment and the business environment in Hong Kong. If we do, it will not be beneficial to wage earners in general either.

Deputy President, I so submit.

(Mr WONG Kwok-hing raised his hand in indication)

DEPUTY PRESIDENT (in Cantonese): Mr WONG Kwok-hing, do you wish to raise a point of order?

MR WONG KWOK-HING (in Cantonese): Yes, Deputy President.

DEPUTY PRESIDENT (in Cantonese): What point of order do you wish to raise? Please speak.

MR WONG KWOK-HING (in Cantonese): I wish to request clarification, that is, I wish to make a clarification.

DEPUTY PRESIDENT (in Cantonese): Are you seeking an elucidation?

MR WONG KWOK-HING (in Cantonese): No, I wish to make a clarification. May I?

DEPUTY PRESIDENT (in Cantonese): Do you mean elucidating your own remarks?

MR WONG KWOK-HING (in Cantonese): I wish elucidate the comments made by Mr Jeffrey LAM just now.

DEPUTY PRESIDENT (in Cantonese): You cannot elucidate the comments made by Mr Jeffrey LAM. You can elucidate your own comments but your opportunity is gone because you have already spoken. Please sit down.

DR FERNANDO CHEUNG (in Cantonese): Sometimes, I too do not quite understand why the understanding of the Liberal Party of the domain of social security and welfare is so limited — sorry, Deputy President, you are also a member of the Liberal Party.

Just now, when Mr TIEN and Mr Jeffrey LAM spoke, they said they had not heard of any advanced country whose citizens could automatically receive a sum of money, say, \$3,000, on reaching a certain age. I wish to ask Members of the Liberal Party if they can give examples of advanced countries that do not have such a system. Such examples are very hard to find because there is hardly any advanced country or region that does not have a universal retirement protection system. A universal retirement protection system means that when citizens reach a certain age, usually 65, they are entitled to receiving a pension and irrespective of whether they used to have any work or not, they are all automatically eligible. This is why the system is described as universal. As to whether the amount of money is always more than \$3,000, this may not necessarily be the case.

(THE PRESIDENT resumed the Chair)

Just now, Mr LEE Cheuk-yan told me that his mother had lived in the United States for more than 20 years. She had all along been receiving a pension in the United States but she had never worked. Of course, I have an even better idea because I have lived in the United States for over a decade. Throughout this time, I worked in the social service sector and many of my clients were elderly people who had migrated to the United States. In a universal retirement protection system, when citizens reach a certain age, they will automatically receive a basic sum of money to enable them to enjoy basic security in living. This is almost something taken for granted and it never crossed our mind how things can be otherwise. This is in fact a characteristic of Hong Kong. Perhaps when there is the opportunity, we have to carry out exchanges with the Liberal Party to make them understand that many countries in

the world actually provide some sort of basic protection to their citizens so that elderly people do not have to live in worry or fear or be concerned that their basic living cannot be sustained. We believe that when a society reaches a certain degree of economic development, it will no longer allow its citizens to live in such a state. Therefore, I really do not understand why they seem to have a serious misunderstanding of the situation in the world, so much so that they have to propose such an amendment to Mr Frederick FUNG's motion. In fact, Mr Frederick FUNG only talked about giving consideration, however, it turns out that even thinking about this is not allowed.

Frankly speaking, I also do not understand what Mr Jeffrey LAM meant when he talked about double benefits just now. Just now, he seemed to hint that this had to do with item (b) of the amendment. He said that on offsetting severance payments by the MPF, if employers had to bear the cost of both, that would amount to double benefits. President, this is absurd. Theoretically, the MPF is designed to protect retirees. When they are old and cannot work to earn money, they can have a sum of savings so that their retirement life can be protected. As regards severance payment, it is designed to enable employees to have a basic amount of money to pull through when a company encounters financial difficulty and has to lay off employees, so that their income do not have to drop to nil all of a sudden and their families or they themselves will not sink into poverty. In view of this, what is the relationship between the two, President? There is none. Why should they be offset against one another? I cannot see any reason for the offsetting arrangement.

Therefore, in fact, item (b) in the amendment moved by the Liberal Party is unjustifiable because the main aims of these two types of protection are different. Do they overlap in any way? Of course, this is possible. If an employee has reached retirement age and it so happens that he is laid off, the types of protection he needs is broadly the same, however, such instances only account for a small proportion. Even so, the aims of the two are in fact different. Insofar as pension in general is concerned, we have to provide basic livelihood protection to elderly people when they reach a certain age, whereas for workers laid off suddenly, their past contribution should be recognized, therefore, the compensation given to them should be additional compensation and should not be offset using their pensions. Therefore, under the MPF System, even with regard to wage earners who are about to reach retirement age, their severance payment should not be offset by the MPF.

President, today, we are discussing the report of the Subcommittee to Study the Subject of Combating Poverty and most of the recommendations therein are in fact very basic ones. I believe if we compare these recommendations with the situations in various developed places in the world, we would really feel ashamed because the recommendations therein are really much too modest. The Liberal Party or other people may have some misunderstanding of the recommendations and friends who lack a basic understanding of social security systems or welfare in general may think that the recommendations are significant. However, in reality, only certain basic protection on livelihood and basic health care needs are recommended, for example, consultation of Chinese medicine practitioners, provision of care in local communities, reducing the waiting time to less than one year as a result of the supply of residential care places falling far short of demand. President, our requests are so humble that they really are laughable. However, if we look at the response of the Government to this report, it can be said that almost no direct response has been given to any of the specific recommendations.

President, 10 years have passed since the reunification. With the economy having developed to its present state, I am ashamed of the treatment given by present-day Hong Kong and the present Government to the elderly and I also feel sorry for the situation of elderly people who live in poverty. I hope the Liberal Party and the people concerned can wake up and we have to face up to the problem of elderly in poverty. Thank you. *(The buzzer sounded).....*

PRESIDENT (in Cantonese): Your speaking time is up. Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): President, when it comes to poverty, this is in fact a global problem. At present, 30 000 children die of poverty every day, that is, one child dies in every three seconds. In Southeast Asia, 500 000 children under five years of age die of poverty every year. The living standard of 1 billion people throughout the world is US\$1 per day. On hearing these figures, the Hong Kong Government may congratulate itself because Hong Kong people fare better than these people. The Liberal Party can cite these figures to claim that the elderly in Hong Kong are not really that miserable because

compared with the poor places in the world, the elderly in Hong Kong are really faring so much better.

In what light should we look at the problem of poverty in Hong Kong, in particular, the problem of elderly in poverty? Let us look at some developed countries. Several friends, in particular, friends of the pro-democracy camp, have cited a lot of figures to illustrate how other developed countries treat their elderly people.

If we look back at the situation in Hong Kong, we will find that we have lagged behind other developed regions. The situation in Hong Kong is particularly worrying and we find the problem serious because the problem of poverty, particularly the problem of elderly in poverty in Hong Kong, is deteriorating very quickly. If we go through the information of the Census and Statistics Department, the Gini Coefficient a decade ago was 0.483 but it had risen to 0.533 last year and the increase was shocking. This fully reveals the intensifying wealth disparity problem and the deteriorating problem of poverty in Hong Kong. Another figure arousing anxiety is the proportion of families with a monthly income of less than \$4,000, which has risen from 6.7% a decade ago to 9.2% last year and the increase is great and rapid.

What policy on helping the poor has the Hong Kong Government formulated? The Commission on Poverty has convened many meetings, however, the final results are all disappointing. In particular, in respect of the problem of elderly in poverty, no specific or material improvement was made. President, I have pointed out a number of times in this legislature, in particular, in the debates on the Budgets, that the Government as a governing body must deal with the problem of poverty through public finance and see how it can distribute and redistribute resources through taxation, so that disadvantaged members of the public, particularly elderly people, will not be compelled to live below the poverty line due to their lack of ability or physical problems which render them incapable of finding work offering a reasonable level pay under the existing system and the existing economic mode. This is an inherent responsibility of the Government. However, for many years, our Government has completely ignored this fundamental duty.

In times of economic gloom, the Government cited the fiscal deficit as the reason for not taking care of all people with financial difficulties, saying that the Basic Law stipulated that it was necessary to keep expenditure within the limits

of revenues. This year, when the economy is looking up, money is then handed out, and tens of billions of dollars at that, including the waiver of rates for two months and tax reductions. Many Members among us are also very delighted and only three Members opposed this year's Budget.

If one is really concerned about the problem of poverty, one should oppose the handing out of money by the Government. If one is truly concerned about the problem of elderly in poverty, one should request that the Government refrain from handing out that \$20 billion, reducing the taxes or waiving the rates for two quarters. Instead, that sum of money should be used to take care of the poor, particularly elderly people living in poverty. The Government wants to hand out money and it also wants to take care of the elderly. As a result, many measures are just empty talks without substance.

Therefore, in order to deal with the poverty problem, it is necessary to adopt a definite and clear-cut stance. On fiscal management, the Government must be committed financially instead of saying this will not do and that will not do when it comes to financing, when it is actually necessary to allocate funds to take care of the elderly, in particular, to deal with the problem of elderly in poverty.

We in the Social League of Democrats also specifically requested in the last Budget debate that the Government allocate \$20 billion to establish a fund for members of the public at the grassroots level, so as to improve their lot and to meet the actual needs of a lot of people with low income, including the provision of health care subsidies to people not eligible for CSSA, the provision of health care and transport subsidies to people with disabilities not eligible for CSSA, the provision of various kinds of subsidies to low-income single-parent families not eligible for CSSA and the provision of assistance designed to improve the lives of low-income workers.

In fact, given Hong Kong's financial situation, even if the tax regime is not comprehensively reformed, we already have the ability and financial capability to improve the circumstances of this group of poor people, in particular, poor elderly people merely by making use of the existing surplus. The question is whether the political parties to which Members of the Legislative Council belong have sufficient and strong enough resolve to compel the Government to do so. If the Government fails to deal with the problem of poverty in proposing the Budget next year, in particular, if it cannot solve the problem of elderly in

poverty, I hope Members who support this motion on "Elderly in Poverty" can all cast their votes against the Budget and deliver a clear message to Henry TANG, otherwise, they are just criticizing the Government in small ways but helping it in major ways and in the end, they will support the Budget again. The problem of poverty cannot be solved in this way and finally, the Government will be condoned and the poverty problem will continue to exist. Thank you, President.

MR ALBERT CHENG (in Cantonese): President, this year is the third session of this term of the Legislative Council and it is also the third time the issue of pension is debated. In fact, I have listened innumerable times to Members' speeches and what I myself want to say has also been repeated many times. Should I go on saying it all? I also have some doubts about this. Originally, I did not intend to speak, however, my blood boils on hearing the remarks made by some people.

These people, these wealthy Members either have no conscience or shame or are ignorant, however, I absolutely respect them because in Hong Kong, people who can make a lot of money are surely not stupid. They must be very clever. They have money. Why are they described as wealthy Members? Of course, it is because they have a lot of money and people with a lot of money are of course very clever, otherwise, how can they have a lot of money? The world is very fair and this free economy and capitalist society called Hong Kong is very fair, so they are surely very clever.

In their speeches, they said that they did not know in what places of the world can people receive pensions after turning 65 years of age. Let me cite one example off hand. Let us take Canada as an example. I have just come back from Canada, where I met many old pals. Are my pals really that old? They are just several years older than me and they have reached 65 years of age, whereas I am 61 years old this year. They no longer have to work and for a couple, each person can receive upwards of \$2,000 in pension. Such is the case in Canada.

Recently, I read the newspaper and learned that the GDP of Hong Kong is a forerunner and Hong Kong people are even richer than Canadians. Why is a universal pension system absent here? How can they come out or stand up and ask shamelessly where in the world such instances can be found? Just now, Dr

Fernando CHEUNG cited Mr LEE Cheuk-yan as saying that the latter's mother also received a pension. Therefore, there is also a universal pension system in the United States and such a system is found everywhere. However, some places do not have it. I know that Ethiopia does not have it, however, do we want to compare Hong Kong with Ethiopia? Surely, we do not. That is why I say that we can only say they either have no conscience or have no shame.

The second point is also one that we would discuss every year. As we all know, present-day Hong Kong owes its existence solely to the hard work of our elders. They engaged in such work as manufacturing garments and toys, operating cottage factories, mining quarries, building tunnels and that was how today's Hong Kong came into being. Can we let them live a life of dignity in their retirement? We have discussed this point every year and if we go on doing so, I myself will also feel that I am getting older and older and more and more long-winded.

I can see that Secretary Dr York CHOW is sitting here. Every year, I would offend him once and I am sorry that I have to offend him again this year. When Mr TUNG initially appointed him and he came out, all Hong Kong people applauded because he said he wanted to champion for the welfare of the elderly. Now, I congratulate him on securing a second term of office. I wonder how he is going to get the job done? However, this year, I would also advise him not to say too much. He has to deliver on his promises, otherwise, how possibly can he get the job done? What he said in the past no longer has anything to do with him because the Labour and Welfare Bureau has nothing to do with him now, so he has got away now. Therefore, I can assure Secretary Dr York CHOW that next year, on this question, I will not offend him again because he has failed to produce any result whatsoever.

When it comes to what some call double benefits and offsetting, that is even more outrageous. They are certainly not double benefits, but unilateral exploitation. How possibly can offsetting be possible? The MPF is made up of the contributions made by everyone and it is completely different from severance payment and long service payment. This is again a measure biased in favour of employers. Therefore, the discussion over these matters will only sow discord on the one hand and is pointless on the other.

In the Legislative Council, this motion debate is not binding, pals. This is not a political issue and we are not talking about universal suffrage, the 4 June

incident or the 1 July rally. Passing this motion will let voters see that directly-elected Members representing New Territories West are very concerned about poor people and not only do they support having the MPF, they also support the introduction of pensions. They have passed the motion, only that the Government does not put it into practice and they can pass the buck to the Chief Executive, Donald TSANG. Why do we not do this? Why do we not blast Secretary Dr York CHOW and criticize him for not getting the job done? It would be highly desirable to do so. However, they are not even willing to make such a gesture. I wonder how they are going to answer their voters? Do they think that all voters are rich? This is not so.

Recently, we are congratulating ourselves because the *Fortune Magazine*, which said that Hong Kong was dead in 1997, reversed the verdict and said that Hong Kong has not died. Everyone has raised this topic in their chats and it has also been discussed in the legislature. Of course, Hong Kong is not dead and such a good time has not been seen in two decades. The turnover in the stock market is close to \$100 billion on a single day and the exchange is awash with funds. However, does anyone remember that someone once talked about a car crash resulting in fatalities? Back then, there was the talk of a car crash resulting in fatalities, however, it did not happen, so should someone not come out to correct that remark? Back then, when the pension was discussed, someone talked about a car crash resulting in fatalities. Was it someone from the Hong Kong and Macao Affairs Office who said so? Anyway, it was a cadre of the State who made this comment, so I call on them to withdraw it. Since other people can also withdraw the comment about Hong Kong being dead, can we also withdraw the comment about a car crash resulting in fatalities? This car called Hong Kong did not crash, there was no fatality and pensions should have been available long ago. If we had pensions, it would not have been necessary to discuss this matter here today.

Therefore, I think the debate today can be conducted in a simple and fair way. There is no need for us to argue or to stand up to elucidate and talk about all sorts of reasons because people all know what fairness is. Television viewers, readers of newspapers, people who pay attention to the meetings of the Legislative Council will see the results after the voting later and there is no need to say too much. The votes for and against the motion will reveal who really works for the elderly and lobbies for the rights of the grassroots.

There is no problem with this. LI Ka-shing can get a pension, so can James TIEN and I. Everyone can get it and they can also choose not to get it or donate it after getting it, so why is it necessary to talk about people without the means or people who has to be cared for? Everyone knows that there are in fact many people who have to be cared for, so why do we force the elderly to apply for CSSA? The CSSA has virtually turned into an old age pension or pensions, however, do Members know — some people may pretend to be stupid and pretend that they do not know — that there are conditions attached to the payment of CSSA to elderly people, that is, their children have to fill out a form declaring that they are impious and they are not going to support their parents or are unable to support them. Worse still, they are not allowed to live with their parents. What does this mean? What sort of world is this?

We often get up to talk about justice, however, we are only paying lip-service. Of course, when talking about it, we sound as though we can achieve a lot, however, the trouble is that when we have to take action, it looks as though we were entirely powerless despite our good intentions. It is not true that we are powerless in spite of our good intentions when we have to take action, rather, we act against the dictates of our conscience. How can I sit in this Chamber together with this sort of people? There is really nothing I can do.

Everyone will see who support or oppose the motion later on. That will show what their positions are. Therefore, what is the use of fine excuses and guilt words? Voters are most discerning. I so submit. Thank you.

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

MR ANDREW LEUNG (in Cantonese): Madam President, the position of the Liberal Party is very clear. We should support the elderly so that they can live a life of dignity if necessary, and this is very clear.

Concerning the remarks made by Dr Fernando CHEUNG just now, I do not know if he wanted to be deliberately misleading, however, the result is that they are really misleading. Of course, we have no way of knowing the circumstances in which Mr LEE Cheuk-yan's mother passed away. The social

security implemented in the United States is a contributory retirement scheme. People with the means will make contributions before retirement and the pensions they receive upon retirement are of course their own contributions. Meanwhile, for people who cannot afford to make contributions and have to rely on the government, the government will provide pensions to them. This is precisely the approach advocated by the Liberal Party. In other words, it is not true that everyone will automatically receive a pension when he reaches a certain age.

In fact, if all Hong Kong people are entitled to this kind of welfare benefit, this will exert immense financial pressure on Hong Kong. Moreover, the Basic Law also states that a low-tax regime should be practiced in Hong Kong, therefore, we should spend within our means. Of course, some Members want to occupy the moral high ground, believing that it would be best if everyone can get such a welfare benefit. As a responsible legislature, however, when Members make such a proposal and propose that everyone should be entitled to this kind of welfare benefit, they should consider what will happen to our fiscal revenue.

Of course, a number of Members have also talked about offsetting the MPF benefits and Mr LAM has also talked about this. When enacting the relevant legislation, we made it very clear that we wanted to allow offsetting, so we cannot and should not forget about this now, or to request that we start anew by scrapping the arrangement. At that time, both sides had wrangled a great deal in the legislature before a consensus was reached, and what came into being was not just a consensus but a piece of legislation. However, some people are now arguing about why offsetting should be allowed. This is obviously being disrespectful to the law of Hong Kong and doing so is also unfair.

I wish to reiterate here that the Liberal Party supports elderly people to live a life of dignity in retirement and when they have the need, the Government should provide for them generously to enable them to live a life of dignity in retirement.

Thank you, Madam President.

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

MR RONNY TONG (in Cantonese): President, in many civilized societies nowadays, people regard welfare benefits for the elderly as something to be proud of, however, it is a shame that in Hong Kong, particularly in this legislature, some people regard welfare for the elderly as a burden or pressure. I heard some Honourable colleagues say that they support enabling the elderly to lead a life of dignity in their old age. I only wish to ask if our Honourable colleagues have ever seen some old women pushing along a pile of cardboards that is five or six feet high or slugging a bag of drink cans on her shoulder in the street. Where is their dignity? If we really insist that elderly people in Hong Kong has to lead a life of dignity, when we see these people leading such lives in the streets, do we ever really do some self-reflection and ask whether our ideal of letting the elderly live a life of dignity has been realized? If not, what should be done?

President, the foregoing scenes are not those found in a film, but what many people can see every day. These scenes are in fact a reflection of the conscience of society, a portrayal of the core values of this society. It is true that the proportion of Rolls Royces in our streets is the highest in the world, however, our wealth disparity is also the greatest. Therefore, if we sit in this Chamber and engage in empty talk about how we hope elderly people can lead a life of dignity, sorry, I think doing so is a bit over the board.

President, social welfare is not a duty, but something that must be done, and there is a constitutional basis for it. President, we were often criticized for not knowing the Basic Law well. Perhaps let me remind our friends who have forgotten about Article 145 of the Basic Law. It is stipulated therein that "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."

President, it was exactly two months ago that the Chief Executive told us Hong Kong was experiencing unprecedented success and our GDP had reached an unprecedented pinnacle. President, this reminds me of two lines at the beginning of Charles Dickens' *A Tale of Two Cities*, "It was the best of times, it was the worst of times". When we see the worst of times, we should reflect on what can be done instead of sitting here engaging in empty talk. Just now, Mr Albert CHENG also pointed out that many people had talked glibly but sometimes, their comments were politically incorrect. In fact, in this

legislature, as Members and representatives of the public, we should jointly lobby and bring pressure to bear on the Government to make it take action. The Government is far cleverer than Members and at least, it knows how to reason. Everyone says that TUNG Chee-hwa is not a good Chief Executive, however, at least, he knows how to reason. He once said that the Government's policy should be to give the elderly a sense of security and this is also a manifestation of traditional Chinese thinking. On the vast expanse of Chinese soil, such a manifestation cannot be found perhaps only in Hong Kong because once we step into Shenzhen, we can already find it. Is this actually an honour or a shame for us? However, it is a shame that although the Government is somewhat better than the Members in this Chamber and knows how to reason, it does not know how to take actions.

In fact, the implementation of many policies does not take a lot of money. Since I only have a little speaking time left, I will only cite a very simple example, which is our policy on housing. Recently, I have received many complaints. This is because in Tai Po, New Territories East, the population is ageing rapidly, and it is ageing far more rapidly than that in other places. Why? Because in the New Territories East, the age of the buildings in many housing estates is quite advanced and for families that moved into these housing estates in the '80s on account of demolition, resettlement or eviction, the children in these families have now grown up and want to live separately. According to the existing policy of the Housing Department, if they apply together, they will be allocated a flat in nearby housing estates by all means.

When these children have grown up and want to apply for new units, it is true that the authorities did say they would be allocated flats in nearby housing estates as far as possible, unfortunately, the fashion in which the Housing Department demarcated districts is very weird and insofar as the New Territories is concerned, it is divided into southern and northern districts instead of eastern and western districts. President, in the New Territories, there are in fact two trunk routes that run in a south-north direction, not in an east-west direction. Therefore, when these children in the northern district applied for a new unit, often, even though their parents or elderly folks live in Tai Po, they were allocated a flat in Tin Shui Wai. The two places are within the same district, however, sorry, no transport service is available. Even if there are transport services, it is necessary to spend a whole day on travel, so may I ask how children can take care of their old folks? If we want to improve the situation, President, there is in fact no need to spend a great deal of money. It is only

necessary to streamline or change the red tape a little and a lot of people can perhaps be helped. Because not all children treat their older generation with disregard like some Members do.

In fact, there are many people in Hong Kong society who care about the elderly. If the Government really cares about the elderly, it only has to provide a little assistance for many elderly people to lead a life of dignity.

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

MR ALAN LEONG (in Cantonese): President, by the year 2033, the number of elderly people will exceed 2 million, and the proportion of the elderly in the overall population will increase by more than 100%. What is more noteworthy is that the number of elderly in poverty is on the rise. According to a study conducted by the HKCSS, the number of low-income residents who have reached the age of 65 has increased by about 90 000 persons during the past 10 years. It is revealed in the documents issued by the Commission on Strategic Development that the number of low-income residents has increased by about 102 000 persons during the past 10 years. Among them, 60% are retired elderly persons. With the population ageing gradually, together with the economic restructuring, job skills applicable in the past have gradually lost their value. We can clearly forecast that the number of elderly in poverty will increase.

The SAR Government must face up to the stringent social problem of elderly in poverty and formulate suitable policies to alleviate the poverty problem, so that we can enable those who have made contribution in the past to the development of society in Hong Kong to lead a happy and contented life in their old age. As an international cosmopolitan city, Hong Kong should not allow the occurrence of cases with people dying of starvation on the streets. Although the Government may say that there are no such cases in Hong Kong now, but at the time when we are celebrating the 10th anniversary of the reunification, if we examine Mr TUNG's policy for the elderly released in 1997, "We need to provide a sense of security, a sense of belonging and a feeling of health and worthiness to the elderly", then we can easily see that nothing particular seems to have happened during these 10 years. It is because if we

care to take a look around districts with more elderly people, such as Wong Tai Sin, Kwun Tong, and so on, we can easily see some elderly people with their backs bent pushing wooden carts which are even heavier than their own body weight while collecting some cartons or rubbish on the roads. Such scenes, as said by many colleagues, are commonplace occurrences.

President, in my opinion, when the Government formulates policies, it should consider strengthening the support network with families being the nuclear, providing incentives to motivate family members to look after the elderly members. According to some studies, if the elderly people can enjoy a normal family life with suitable care and support, it will substantially reduce their chances of suffering from dementia and depression. From the perspective of the resources of society as a whole, if the elderly can get suitable family care, public medical spending on the elderly can be substantially reduced. Examining the issue from this perspective, President, we can see that the money spent on the elderly cannot simply be regarded as a kind of expenditure; instead, it is a kind of social investment. And this sort of investment can benefit society as a whole.

Nowadays, of course the Government has, through the adoption of tax concession, encouraged families to take care of their elderly members. However, has it ever occurred to government officials that in some families, for the sake of taking care of the elderly, certain younger family members have to give up their jobs in order to stay home to provide the care? Under such circumstances, tax concession is absolutely not effective at all. In order to further encourage family members to stay home to take care of the elderly, the Government may consider granting additional tax concessions to persons who stay home to take care of the elderly.

President, I would like to encourage the Government to provide incentives to families in different policy areas, so as to make family members consider their respective families as the nuclear, and to care about and look after the elderly people. In the meantime, the Government should make preparations, so that in case the elderly are not taken care of or not provided for in living, the Government must establish a safety net, so as to prevent the elderly from losing all sorts of support. However, if the elderly intend to apply for CSSA, since the Social Welfare Department (SWD) has always used household as the unit in calculating the income, the SWD would require the elderly's children to produce a document commonly known as the "bad boy paper". However, the children may refuse to fill in such a document due to different reasons. For example,

they may not wish to lose the dependant parent allowance on their tax returns, or they do not wish to lose face, or some people simply do not want to have anything to do with their parents due to their bad relationship, and so on. Therefore, even if these elderly persons really apply for CSSA, they will not succeed. It is the right time now for us to review such a ridiculous policy immediately and rectify it.

President, finally, I would like to speak briefly on the universal retirement protection scheme. Given the ageing population, it is imperative for us to conduct studies on universal retirement protection now. Besides, we would not say that the middle-class people are being robbed of their MPF benefits, as some colleagues in this Council have alleged. In fact, I think, in many middle-class families, the fathers would go out to work, while the mothers would stay home to take care of the children and household chores. Come to think about this. The present MPF schemes absolutely has nothing to do with these housewives. They would not be made to save up money on a mandatory basis. But if they have not contributed their time and sacrificed the chance to work outside, how can their husbands go out and work without any worries? Therefore, on such a premise, the question of someone's MPF benefits being robbed away simply does not exist at all.

With these remarks, President, I support Mr Frederick FUNG's original motion and oppose Mrs Selina CHOW's amendment.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, then I will call upon Mr Frederick FUNG to speak on Mrs Selina CHOW's amendment.

MR FREDERICK FUNG (in Cantonese): President, with regard to the three viewpoints put forward by Mrs Selina CHOW in her amendment, I would like to provide some clarification or replies. I very much hope that colleagues from the Liberal Party can — although none of them is in the Chamber now, I still hope that they can understand and listen to what I am going to say.

Firstly, they disagree with the proposal of universal retirement protection. This point has already been mentioned in the report. I also hope she can understand that when we met with some NGOs (both an NGO and the HKCSS had proposed some methods from the community for solving the problem), they did not only urge the Government to make allocations. Instead, they had proposed to the Government that a tripartite contribution approach should be adopted to address the universal retirement protection problem. Regarding the so-called tripartite contribution approach, it means that if the CSSA for the elderly and the OAA, and so on, are also included into it, then actually the money the Government needs to allocate for the purpose is by no means substantial. We only need to consider one question. Should the wage earners and employers set aside part of their 5% MPF contributions or should they make another contribution for the purpose? We may further discuss and study this point. Since the amount of money the Government needs to allocate for the purpose is not too substantial, actually this is feasible.

Regarding this issue, secondly, there are actually many shortcomings with the MPF System. As pointed out by many colleagues just now, housewives and the elderly are not covered by the MPF System.

Thirdly, people with a monthly income of \$5,000 or below are also not covered. When these people grow old, what kinds of arrangements are in stock for them? Even for people earning more than \$5,000, the contribution rate is still very low. Even if they had made contributions for 20 years or 40 years, the money they can get is still very small. Let us take people earning a monthly income of \$6,000 as an example. They are required to make a monthly contribution of \$50. After 30 to 40 years, the money they can get may even be lower than the CSSA payment. Eventually they still need to have the Government's assistance, that is, the Government still needs to provide them with financial support.

Therefore, we must face up to and handle this problem, and we cannot simply give up what we are doing. And in the report, only words like "consider", "study" and "review" are used. I hope colleagues from the Liberal Party can examine the issue more clearly.

With regard to the second viewpoint in the amendment, that is, the arrangement through which the employers may offset the long service payment

or severance payment with the MPF benefits, I do not wish to explain this in detail because earlier on, many colleagues have discussed this already. The most important point is, I think these are two different issues: one is an issue for handling the issue of severance and labour, and the other is an issue involving retirement. Although such a condition had been laid down when the MPF was established, it happened many years ago. When we are facing the problem of an increasing number of elderly people, can we bring up this issue for discussion again? Or should we decide whether we should make the changes only after a review has been conducted? Even if a consensus had been reached at that time by the three sides, namely, the Government, the employees and the employers, it is not totally impossible for us to conduct a review in due course as the time has changed and the population has changed too.

Finally, it is about the issue of whether CSSA applications should be made on a household basis, or whether the elderly should apply as individuals? We all know that, among elderly applicants for CSSA, half of them are single elderly people. Nowadays, it has become increasingly difficult for the elderly to live with the families of their children. Although it is possible in reality, the Government must first grant exemptions or waivers.

When an application is really submitted, there is a shortcoming in the current system. First, it requires the execution of a so-called "bad boy paper" — that is, the children and relatives of the elderly must declare that they are not going to provide for his livelihood, and the elderly must be self-supporting. If the elderly does not have any money, then the Government would assist him. For some people, they are most reluctant to fill in the so-called "bad boy paper". But on the other hand, if they do not apply for CSSA on behalf of the elderly, eventually the party who will suffer is not the family, but the elderly. As a result, the elderly will have to live in a most frugal manner by cutting down on food and clothing. As some colleagues have said that, even at the age of 70, some elderly people still have to earn a living for themselves by collecting discarded cartons on the streets.

Another shortcoming is, some financially poor families are forced to sign the "bad boy paper". After that, they force the elderly people to live in homes for the elderly, regardless of whether the elderly concerned is willing to live there. In other words, in order to get the sum of money, they arrange for the elderly to live in a rented place or a public housing flat all by himself. What

these elderly people can get, apart from this sum of money, a lack of tie, mutual affection and the concern of his family members — all because of the need to apply for this sum of money. Therefore, I think this suggestion in the report does merit our consideration.

I do not agree with the three points she has put forward in her amendment. Thank you.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, first of all, I would like to thank Members for the comments they have made. With respect to the various recommendations made in the "Report on Elderly in Poverty" released by the Subcommittee to Study the Subject of Combating Poverty (the Subcommittee), the Health, Welfare and Food Bureau as well as the other related Policy Bureaux and departments have already made a detailed response when their representatives attended the meeting of the Subcommittee in May. I would now like to focus my response on the relevant recommendations.

While maintaining a low tax regime, the Government provides a safety net and different kinds of services to elders in need. They include social security, public health care services, subsidized care and support services and subsidized housing to help elders cope with their basic and special needs.

I must stress that our financial commitment to the elderly has been increasing all along. In 2007-2008, the public expenditure on social security for the elderly and various care and support services for the elderly, excluding public housing and public health care services, will amount to \$16 billion. This is an increase of 3.7% over the revised Estimates for 2006-2007. Some Members have said earlier that these are not expenditure items but investment items. I agree with that. Because the investments made have enabled our elderly persons to take up the topmost positions in life expectancy in the world. Having said that, we consider that there is nonetheless still room for improvement in the quality of life of the elderly.

The Comprehensive Social Security Assistance (CSSA) and the Social Security Allowance (SSA) Schemes are the main pillars of social security in Hong Kong. Both are non-contributory in nature. The Subcommittee suggests that a review should be conducted of the adequacy of monthly allowance

payable under the CSSA and SSA Schemes. The standard payment rates for the CSSA elders are higher than other categories of recipients. They are also entitled to a wide range of special grants and supplements. Hence the current CSSA payment is sufficient to meet their basic and special needs. The estimated average monthly CSSA payment for a single elderly is \$3,740.

The Subcommittee suggests that we should extend the permissible annual absence limit under the Old Age Allowance (OAA) of the SSA Scheme. We have already relaxed the annual permissible limit of absence from Hong Kong under the SSA Scheme from 180 days to 240 days since 1 October 2005. The measure allows the recipients to spend more time to travel or visit their relatives and friends outside Hong Kong or take up short-term residence, while on the other hand ensures that public funds are spent on Hong Kong residents who regard Hong Kong as a place of permanent residence and who maintain close links here. We believe that the measure has struck a reasonable balance.

The standard payment rates of CSSA and SSA Schemes are reviewed annually to take account of price changes in accordance with the movement of the Social Security Assistance Index of Prices. This ensures that CSSA/SSA standard payment rates are adjusted regularly to maintain their purchasing power.

At present, the Portable CSSA (PCSSA) Scheme covers Guangdong Province and Fujian Province for the reason that they are the places of origin of the vast majority of elderly CSSA recipients, accounting for about 95% of the total number of CSSA elders. We believe that the existing Scheme has addressed the needs of the vast majority of elderly CSSA recipients. Given the practical difficulties in administering a global PCSSA Scheme, especially in monitoring, and the significant financial implications involved, we cannot support the suggestion to make the Scheme fully portable to all places outside Hong Kong.

To require persons, who are living with family members, to apply for CSSA on a household basis is in line with the policy objective of CSSA, that financial assistance should be provided to those most in need. It also encourages family members to support each other and prevents the avoidance of the duty of care to the elderly by resorting to the CSSA. For exceptional cases meriting special consideration, exemptions from the one-household requirement are allowed where justified.

In Hong Kong, the retirement protection for the elderly is based on three pillars, namely the CSSA Scheme and OAA, the Mandatory Provident Fund (MPF) schemes and voluntary private savings. Before the introduction of the MPF System, employers are permitted by law to make use of the contributions made to registered retirement plans for the purpose of offsetting severance payments or long service payments. The MPF System permits employers to extend this long-standing offsetting practice to MPF schemes and this is the result of extensive consultation and efforts made by all relevant parties. Revoking this offsetting arrangement will result in marked cost implications for the employers. Employers, especially those of small and medium enterprises which take up more than 98% of commercial undertakings in Hong Kong, would be severely impacted. It is a very complicated issue to conduct a review of the offset mechanism under the MPF System. There should be joint and concerted support from both employers and employees. However, as a unanimous view is yet to be formed on this issue, the Government does not have any plan to review this offset mechanism.

The Government has launched a study on "Sustainability of the Three Pillars of Retirement Protection in Hong Kong", which is expected to be completed in 2007. The Government will consider the findings of the study in deciding on the future course of action.

With respect to primary health care services, now most of the services are provided by the private sector. Enhancing primary health care services, especially those in preventive care, would be a focus of our health care reform. We are now working on the formulation of detailed recommendations in this aspect to promote family medicine service and cater to the needs of the elderly for primary health care. At the same time, we will ensure public out-patient service remains part of the medical safety net and takes good care of needy patients, including those from low-income families, chronic patients, disadvantaged groups, and the poor and frail elderly. Recently, the Hospital Authority (HA) is planning to establish on a trial basis in some clinics a booking hotline for the elderly with reserved telephone booking quota. We are also introducing a greater family medicine element into primary health care with a view to raising service quality.

Under the current medical fee waiver system, all CSSA recipients can enjoy medical treatment at public hospitals and clinics free of charge and no prior application is required.

The Subcommittee is concerned about the application procedures for medical fee waiver for non-CSSA elderly patients. The HA will consider applications from non-CSSA patients according to a set of well-established vetting criteria and application procedures to confirm if the applicants are eligible for the fee waiver. This is meant to avoid any frauds. We will strive to strike a suitable balance and reviews will be conducted on a regular basis to remove some unnecessary requirements in the hope of providing assistance to those patients who are genuinely in need. To make the medical fee waiver mechanism more accessible to elderly patients, we have already made a number of improvements to the fee waiver mechanism in the past few years, which include an extension of the maximum validity period of waivers from six months to 12 months for non-CSSA elderly patients who require frequent use of medical services.

On the recommendation to set up more Chinese medicine clinics (CMCs), since late 2003, we have set up a total of nine CMCs in nine districts. We are actively planning another five CMCs in five other districts with a relatively high proportion of elderly population. The relevant funding approval has been sought from the Finance Committee. As for the remaining four CMCs, we shall continue to search for suitable sites taking into account the needs of the population including the elderly.

Fee waiver is provided for CSSA recipients by the public CMCs. As for non-CSSA low income elders, we encourage the NGOs running the CMCs to provide concessions to them. There are also a number of NGOs running other CMCs and many of them do offer Chinese medicine services free of charge or at low fees.

We have reservations about the recommendation made by the Subcommittee, that medical treatment at public hospitals and clinics should be provided to all elderly at half-price. Public hospitals and clinics are heavily subsidized by the Government and the level of subsidy is as high as 95%. A very low fee is charged. Fee waiver is provided for CSSA recipients and those with financial hardship. Those who have the means, regardless of their age, should therefore bear an affordable share of the medical expenses they have incurred. Reducing the fees will not solve the problem and it does not help raise the quality of health care services. A more effective way and a better utilization of public resources is to provide assistance to those patients with financial hardship. For this reason, we have no plans to provide medical

treatment at public hospitals and clinics to all elderly at half-price. However, as I have undertaken in the Subcommittee, we will look into how the medical expenses incurred by elders and patients in need can be further reduced.

Most elders are physically fit and all along we have been promoting active ageing in the community and building a positive image of the elders. We launched a number of promotional activities in 2006 and 2007 in conjunction with the Elderly Commission on active ageing. These included a "grey market" expo, pre-retirement workshops, pilot schemes on learning for the elderly, TV advertising footages and the TV series "Golden Age". We will continue with such work.

Besides "active ageing", "ageing in the community", "continuum of care" and "targeting resources at elders most in need" are the underlying principles of our elderly policy. To assist elders in ageing in the community, we provide them with subsidized community care services. For those who have long-term care needs and cannot be adequately taken care of at home, we provide them with subsidized residential care services.

The Subcommittee suggests expediting the provision of places in subsidized residential care homes for the elderly (RCHEs) to shorten the waiting time to less than one year. The Government has invested heavily in elderly services in the past 10 years or so. The number of subsidized RCHE places has increased by 60% from 16 000 in the year 1997 to 26 000 now. In the next two years, there an additional 800-plus subsidized places will come on stream and we will continue to upgrade the quality of RCHEs.

Of note is that the Government has allocated an additional \$150 million for 2007-2008 to strengthen elderly care and support services, which include enhancing the efforts to outreach singleton and hidden elders (\$38 million), enhancing the support for elderly hospital discharges (\$96 million) and increasing the number of subsidized residential care places in new purpose-built premises (\$16 million).

In face of an ageing population, any support system for the elderly has to be financially sustainable in the long term. Increasing continuously the supply of subsidized community care and residential care services alone will not be sufficient to meet the range of their needs which vary according to their background. We will continue to promote shared responsibility of individuals,

their families and society in meeting the needs of the elders, and encourage a balanced mix of public and private elderly care services to widen the choices for quality self-financing and private residential care places providing differential services. In consultation with the Elderly Commission, we will continue to explore ways of responding to the challenges of an ageing population effectively, including considering how to put in place a sustainable long-term care financing model, taking into account the development and outcome of the study on health care financing.

With respect to housing policy, the Housing Authority has formulated a number of measures to cater for the housing needs of the elders. These are:

- Launching a number of priority housing schemes for the elderly, enabling eligible elderly applicants to be allocated flats earlier and choose a flat in the urban areas, and allocate two flats outside the urban areas in the same housing estate for elderly parents and their family with younger members;
- Facilitating through the adoption of schemes on adding members to a household, relocation and combining households, the young in taking care of the needs of their elderly parents;
- Adopting barrier-free common design since 2002 in public rental housing blocks so that the elderly and the disabled residents can live in safe conditions; and
- For elderly public rental housing tenants, if it is proved that there is serious and entrenched discord among family members or due to other reasons meriting compassion, and upon passing the means test and meeting the ownership requirement, on recommendation by the Social Welfare Department, the Housing Department will make arrangements for splitting of a household. In serious cases, persons including the elderly may apply for compassionate rehousing.

All in all, through the current non-contributory social security system and the provision of public health and elderly care and support services as well as

subsidized housing which are heavily subsidized by the Government, we are able to cater for both the basic and special needs of the elderly. We will continue to explore how the elderly in need can be assisted more effectively to meet their needs and how their quality of life can be raised.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment moved by Mrs Selina CHOW to Mr Frederick FUNG'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 Frederick FUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Frederick FUNG 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:

Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Vincent FANG, Mr Jeffrey LAM and Mr Andrew LEUNG voted for the amendment.

Ms Margaret NG, Mr SIN Chung-kai, Mr WONG Yung-kan, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the amendment.

Geographical Constituencies:

Mrs Selina CHOW voted for the amendment.

Mr LEE Cheuk-yan, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Kong-wah, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr Ronny TONG and Mr Albert CHENG 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, 15 were present, six were in favour of the amendment and nine against it; while among the Members returned by geographical constituencies through direct elections, 16 were present, one was in favour of the amendment and 14 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 now speak in reply. You have two minutes 50 seconds.

MR FREDERICK FUNG (in Cantonese): President, I am disappointed at the reply furnished by Secretary Dr York CHOW because his speech consists mostly repetitive replies provided by the Department (sic) or the respective government departments in the meetings of our Subcommittee this year. In other words, there has been no progress for one whole year; even in the policy aspect and the aspect of caring for the elderly, there has been very little progress. Only the

housing policies mentioned earlier are something innovative. We have approached different departments to discuss the problems faced by the elderly. Apart from the housing aspect, where several new policies have been formulated, most other initiatives are already in the process of being implemented.

What is even more disappointing to us is the review of the retirement protection for the elderly. The authorities had told us originally that the review report would be released by end of 2005, and later the date was changed to 2006. But we are already in 2007 now, so the review has been overdue by more than one year. Yet the research report still has not been released. Even our Subcommittee has studied the subject for nearly half a year. But, with so many full-time officers, why does the Government take so long to complete the review of retirement protection? This is disappointing to us.

I would like to reiterate that the Subcommittee thinks that, in the face of the growing number of elderly people and the poverty problem, there are several major areas which the Government cannot ignore: First, financial support; second, the medical aspect; third, the hospitalization aspect; and fourth, the need to live in dignity. Since I have only very little speaking time left, I am not going to discuss these in great detail now. I just want to stress that financial resources are most important for the elderly. If they have financial problems, no matter whom they approach to ask for money, the dignity of the elderly would still be hurt.

President, I still have some time left. I would like to lobby the Liberal Party on this motion. Although their amendment was not passed, I still hope that they can support my original motion. We all know that the original motion has already incorporated the divergent views held by the Liberal Party — including the views expressing disagreement, the views expressing reservations and even the views expressing half-acceptable and half-unacceptable opinions. We have in fact included all the opinions in the motion. Their support for the original motion will not affect their expression of opinions to the Government in future. I hope the Liberal Party can also vote in favour of the motion. We hope today's motion can at least present the Legislative Council's proposals and demands to the Government on behalf of the elderly people.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Frederick FUNG 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)

Mrs Selina CHOW rose to claim a division.

PRESIDENT (in Cantonese): Mrs Selina CHOW 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, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mrs Selina CHOW, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU

Kong-wah, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 15 were present and 15 were in favour of the motion; while among the Members returned by geographical constituencies through direct elections, 16 were present and 15 were in favour of the motion. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

(Members tapped on the bench to express appreciation)

PRESIDENT (in Cantonese): It is exactly 8.50 pm now. I think we can finish the remaining item on the Agenda before midnight. Let us continue with the meeting.

PRESIDENT (in Cantonese): Second motion: Lowering the Mandatory Provident Fund management fees.

I now call upon Ms Miriam LAU to speak and move her motion.

LOWERING THE MANDATORY PROVIDENT FUND MANAGEMENT FEES

MS MIRIAM LAU (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, the life expectancy of Hong Kong people is getting longer and longer. This, together with our low fertility rate, has led to the rapid ageing of our population. It is estimated that by 2033, people aged 65 or above

will account for 27% of our total population, up from the 12.5% in 2006. On average, two working adults will have to support one elderly person, so the burden will be very heavy. If people do not save for the rainy days and make good preparations, the quality of their life upon retirement may decline drastically.

Before the implementation of the Mandatory Provident Fund (MPF) System, most employees in Hong Kong did not enjoy adequate retirement protection. But after six and a half years of implementation, the MPF System is now able to benefit some 2.4 million employees, enabling them to make advance preparations for their life after retirement by making systematic savings and investments. As at March this year, the net asset value of all MPF schemes stood at \$211.19 billion, meaning that on average, the savings of each employee amounted to nearly \$88,000. This looks quite satisfactory, but if the trustees had not charged such exorbitant management fees, the savings of each employee would have been much greater.

The Mandatory Provident Fund Schemes Authority (MPFA) disclosed a couple of days ago that the MPF management fees charged in Hong Kong ranged from 0.41% to 4.19% of the contributions. The highest fee is charged for guaranteed funds. And, stocks funds charge the lowest fee. The average rate of management fee is 2.06%. When compared with the 0.4% to 0.6% commonly charged in European and American countries, the rates charged by trustees in Hong Kong are clearly on the high side. It is especially worth mentioning that in the case of low-risk products such as capital preservation funds, contributions are most of the time spent on purchasing products or bonds with fixed interests only, and the procedures involved are by no means complicated. Therefore, there can be no justification for charging a management fee higher than those of other investment items.

Actually, the excessive management fees charged by trustees are a problem that even the MPFA itself is aware of. The new Chairman of the MPFA, Mr Henry FAN, remarked sometime ago that the management fees charged by trustees were much too high and improvements must be made.

To what extent will excessive management fees eat into the retirement benefits of employees? According to the computations by some experts, in the case of an account with a combined monthly contribution of \$2,000 from the employer and employee and an annual return rate of 5% over a 40-year period of

contribution, the employee should be entitled to \$3.05 million in retirement savings at the age of 65 if no management fees are charged. However, if an annual management fee of 1% is charged, his MPF will "shrink" by some 23%. In other words, as much as \$700,000 will go to the pocket of the trustee. If the annual management fee is 2%, the "shrinkage" will even be larger, amounting to almost 40%. This means that some \$1.2 million will be pocketed by the trustee. The employee will get only \$1.8 million in the end after working so hard to make contributions. As the saying goes, "Conscientiously, the honeybees are refining the nectar from a hundred flowers, but just for whom are they making all the honey?" MPFs have turned out to be the "honey" for trustees, something that lines their pockets.

The management fees charged by MPF trustees are so exorbitant, but why have such fees never been adjusted over the past six and a half years? The reason is very simple — there has been no competition at all. According to past experience, since employees can choose their trustees for "voluntary contribution schemes" and "preserved accounts" under the MPF System, there is competition and trustees are willing to reduce their management fees in order to attract clients. For instance, for the purpose of inducing employees to switch their preserved accounts, some trustees may lower their management fees from 1.95% to 1.5%.

How are we going to promote competition? I think that one workable measure should be the idea currently considered by the MPFA, that is, the idea of allowing employees to choose trustees for "employees' contributions" and switch the accumulated contributions only once a year. As for employers' contributions, trustees should continue to be selected by employers.

We maintain that this measure can achieve the following desirable results: (1) trustees must make sure that their management fees are competitive; (2) trustees must ensure satisfactory investment returns, or they may lose their portfolios of employees' contributions, because employees may choose to transfer such contributions to other trustees. For this reason, if trustees want to retain their portfolios of employees' contributions, they must consider how they can lower their fees and improve their performance. As for employers, since they can switch the money only once a year, the fees will not be too high even if they are required to pay additional administrative fees. In this way, employers will not have to bear too heavy a burden while employees may choose new trustees. This can be described as a win-win proposal.

The Liberal Party maintains that this is an appropriate arrangement. The reason is that employers must pay long service payment or severance payment to their employees and the MPF contributions of employers can be used to offset such payments. For this reason, there should be nothing wrong with allowing employers to choose the trustees they consider reliable. Employees, on the other hand, can enjoy more choices. There will thus be more competition, which will lead to lower management fees. In other words, both employees and employers will benefit at the same time.

However, we still wish to raise a number of problems which must be carefully handled in case the proposal mentioned above is implemented. For example, the relevant trades are concerned that if, by mere coincidence, all the 2 million members of MPF schemes in Hong Kong choose to change their trustees at the same time, huge fluctuations of the investment market may easily result, as they will need to sell their old funds and buy new ones in the market. The cumulative assets of MPF schemes are worth more than \$210 billion, and once employees are allowed to change trustees for their contributions, 60% of such funds (roughly \$126 billion) may be transferred freely. And, about 27% of this sum of money is invested in Hong Kong stocks. If selling takes place all at the same time, the amount of capital involved will be as much as \$34 billion. The impact on the financial market must not be ignored. Therefore, when considering the idea of allowing MPF scheme members to choose trustees freely, we must also consider how best to prevent any negative effects or unnecessary impacts on the market.

Madam President, the Liberal Party believes that the introduction of an appropriate degree of competition will, to say the least, induce trustees to reduce management fees. One similar case is the property mortgage market. In the past, one could get a mortgage only at an interest rate of prime plus 2%. But following the abolition of the interest rate agreement, the mortgage interest rate has gone down to prime minus 2% to 3%. This is a clear example of how competition can benefit consumers.

If the erosion of the contributions made by employees and employers can be minimized, employees' retirement protection can certainly be enhanced. As for employers, since the chances of their contributions being eroded are reduced, the chances of their having to make any further payment after offsetting their MPF contributions against long service payments can also be reduced. This will be beneficial to employers as well. We therefore totally agree that the

MPFA should give more thoughts to the matter and adopt the arrangement proposed earlier on (Further studies on the relevant details must of course be conducted). In any case, measures must be formulated to lower the levels of MPF management fees, so as to make sure that the contributions of employers and employees will not be eroded by the management fees of funds.

The introduction of competition aside, we also believe that the operation of MPF schemes should be made more transparent. In particular, if trustees can disclose information on their management fees, investment returns, and so on, employees will certainly be able to choose a satisfactory trustee after making comparison of fee levels and performance. The disclosure of such information will exert a certain degree of pressure on trustees. But such pressure is desirable because trustees must seek improvement when they are under pressure.

Besides the "shrinkage" of MPF contributions caused by exorbitant management fees, another problem which has attracted widespread criticisms is that in many cases, the rates of MPF investment returns are rather low. According to the latest information of the MPFA, between the implementation of the MPF System and the end of March this year, the average annual rate of investment returns is 8.21% after the deduction of various fees. But upon close examination, we will notice that the average return rates for several types of funds were actually very low. In the case of bond funds, for example, the return rate was just 3.31% even if we look at the period from 2001 to the latest period of 2007. If we look at the first six years, the rate was even as low as 3%. As for guaranteed funds, the rate was merely 1.86%. In contrast, if we look at one index compiled by the HSBC Group Holdings, we will see that during the period from 2001 to 2006, Asian currency-basket bonds (with no ingredient of the Japanese Yen) yielded an average annual growth rate of 9.28%. Why are MPF return rates so low?

The most ironical thing is that capital preservation funds are literally capable of preserving capitals only. The average annual return rate is just 1.18%, which is even lower than that of savings accounts. For instance, a bank deposit of \$10,000 can now earn interest at the rate of 2.25%, which is far higher than the return rates of capital preservation funds managed by "professional" fund managers. We are not saying that there should not be any MPF arrangements. We are simply asking, "The management of capital preservation funds is very simple, but why are the management fees so high and the returns so low?"

Actually, according to many academics and experts, the choices for MPF investments may be appropriately increased. In the case of stocks funds, for example, only relatively mainstream funds are selected, with choices limited to markets in the United States, Europe and the Asia-Pacific Region. As for countries with good performance in recent years, such as Japan and South Korea, there are not many available choices of funds. But there are other types of funds in the open market, such as trade funds (health care product funds, for example), emerging market funds (such as those in Latin America and Eastern Europe), and commodity funds (such as energy funds). Therefore, on condition that there is no contravention of all those major principles against any investment in hedge funds, and so on, it will only be proper to carefully select some quality funds to increase the number of choices for the public, so that the rates of return can be raised.

Many people say that since the sole reliance on MPF benefits will not enable them to cope with their expenditure after retirement, they must make other savings and investments. People of course have the right to choose to do so. But I do not think that we should thus brush the MPF System aside and pay no more attention to it. We must enhance our monitoring of such savings for the "rainy days".

Therefore, I hope that the motion today can serve to arouse people's concern about their MPF contributions. I hope that as the MPFA plans to amend the legislation for the enhancement of transparency, people can take the opportunity to actively monitor the various aspects of fund performance, including management fees and rates of return, with a view to choosing the retirement investment plans and trustees most advantageous to them.

With these remarks, Madam President, I beg to move.

Ms Miriam LAU moved the following motion: (Translation)

"That, in view of the relatively high management fees charged under the Mandatory Provident Fund (MPF) schemes and their less than satisfactory investment returns, this Council urges the Government to immediately adopt relevant measures and create favourable conditions to promote competition in the MPF management market, thereby effectively lowering the management fees of the MPF schemes, and appropriately

increase the variety and flexibility of their investments as well as strengthen the monitoring of their investment performance, with a view to preventing the erosion of the hard-earned money contributed to the MPF by both employees and employers, and enhancing the effectiveness of the MPF in providing protection to employees' retirement life."

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): Mr SIN Chung-kai, Mr CHAN Kam-lam and Mr WONG Kwok-hing will move amendments to this motion respectively. Mr Andrew LEUNG will move an amendment to Mr SIN Chung-kai's amendment and Mr Jeffrey LAM will move an amendment to Mr CHAN Kam-lam's amendment. The motion and amendments will now be debated together in a joint debate.

I will call upon Mr SIN Chung-kai to speak first, to be followed by Mr CHAN Kam-lam, Mr WONG Kwok-hing, Mr Andrew LEUNG and Mr Jeffrey LAM; but no amendments are to be moved at this stage.

MR SIN CHUNG-KAI (in Cantonese): President, we greatly welcome this motion moved by the Liberal Party today. And, we also welcome thorough discussions on the motion. But I wish to remind the Liberal Party that many years ago, when scrutinizing the relevant bill, they actually opposed the idea of allowing employees to choose the funds they wanted to invest in. Today, they are shedding crocodile's tears and asking others why employees are not allowed any choices. They opposed the idea many years ago.

Then there is the second point. Members all understand that there must be stable long-term investments in order to yield more satisfactory returns. Members may now think that the rate of 8.21% is not satisfactory. But if the Government had yielded to the pressure of the Liberal Party and stopped all works during the SARS outbreak, I believe that the rate may even be lower than 8.21% now. Therefore, they should remember the kind of pressure they exerted on the Government.

Capital preservation funds, as pointed out in the discussions just now, yield very low rates of return, many "thanks" to Miss CHAN Yuen-han indeed. Years back, the Government was also under pressure from trade unions for the establishment of funds with more secure returns. Such pressure ended up in the establishment of capital preservation funds, which charge high fees but yield very low returns, much to the suffering of employees. But, well, this is a matter of investment decision after all.

President, the theme today..... the theme of the motion is in the right direction, as it relates to investment returns and fees. To begin with, investment returns are unsatisfactory but fees are high. High returns must depend on investment strategies. As for low fees, they can only be possible with competition. It has been six years since the MPF System was implemented in 2000. In the course of implementation, many problems have surfaced. As I mentioned just now, the problems are low transparency and high management fees. In the past, the Legislative Council already spent lots of time on the discussions of these problems. Last year, during the Question Time of a meeting, I also questioned the Government on the management fees of MPF schemes. But the Government was very slow in realizing the problem. It was not until the new MPFA Chairman, Mr Henry FAN, publicly talked about the exorbitant management fees charged by trustees that the Government started to squarely address the problem. Actually, we already pointed out this problem as early as 10 years ago during the debate on the relevant bill. We asked at that time why employees were not allowed to choose MPF managers and trustees. Therefore, I am a bit angry today.

At present, there are 10 approved trustees and nearly 400 constituent funds. There is competition, but the management fees of MPF are still persistently high. The greatest problem is that the real beneficiaries are unable to choose any trustees. Those who can do so are not the real beneficiaries. It is therefore small wonder that we cannot rely on market forces to lower the levels of management fees. Currently, under the MPF System, trustees are selected by employers, but the beneficiaries are employees.

Mr Andrew LEUNG's amendment actually serves to clarify mine. It will certainly be most satisfactory if employees can be allowed to choose trustees for employers' portions of contributions as proposed in my motion. But since

employers' MPF contributions can be used to offset long service payment, employers may be worried that if employees choose high-risk funds, then when returns are low, there may not be any money to offset long service payment. Employers therefore insist that the trustees for their portions of contributions should be selected by themselves. I can accept this as a compromise that can improve the situation. The Democratic Party of course accepts this idea. To say the least, the MPF contributions of employees..... When the authorities replied to my question last time, they already clarified that roughly 40% This is also an improvement.

I of course think that it will be most satisfactory if employees are also allowed to select trustees for employers' portions of contributions, because they are the very ones who are most concerned about their long-term interests. When selecting trustees, employers may be influenced by many factors. For instance, speaking in a radio programme this morning, Miss TAM Heung-man questioned whether there would be any offering of side-benefits, that is, whether employers would be offered any associated services, or "back-door" benefits, during the process of selecting funds and service providers.

President, we are of the view that the motion today is something like belated spring. We are fortunate to have a new MPFA Chairman. Immediately after his assumption of office, he blew the battle horn when meeting with the media. The debate actually started as early as 10 years ago. However, for a number of reasons, the Government..... First, during the PATTEN era, a contributory scheme was put forward, but since it was decided that no central provident fund scheme should be set up, the present MPF System was subsequently introduced. And, all this required the compromise of employers, employees and trade unions. But as pointed out over all these years, such schemes must be implemented as early as possible if people are to enjoy any retirement protection.

Therefore, we think that this present review will not only allow employers to have choices. More importantly, through the information disclosure of the MPFA..... In foreign countries such as Australia, there are similar practices. Supervisory bodies are permitted to disclose at least two types of figures on their websites — the return rates of individual service providers and their respective total costs or fees. If, for example, there is a ranking of all the 380 or so types of funds (based on audited accounts, of course), employees will be able to obtain more information to help them select the funds suitable for them. We must, of

course, note that even if employees can know what types of funds are suitable for them, they must also be allowed to switch from one fund to another. But if they switch too frequently (bearing in mind that every switch will inevitably incur costs) For this reason, the Government or the MPFA may advise them that they should switch roughly once a year.

I maintain that as a start, fund switching must not be too frequent, or the original intent will be defeated, because costs will be incurred every time. I think it is necessary to strike a balance. Besides, I also think that one more thing should be done — regular disclosure of information. At least, the return rates of the several hundred types of funds and their fees (total fees, I mean) should be disclosed annually on the websites. Comparison and disclosure of information, coupled with the inclusion of the necessary provisions in the Code on Disclosure for MPF Investment Funds, will increase transparency. Employees will thus have access to more basic information when assessing funds. In this way, only quality funds will survive. It is only through market forces that return rates can be raised.

Let me now respond to Mr WONG Kwok-hing's opinion about the monitoring of fees. If MPF scheme members or employees are ever consulted on the need for monitoring the charging of high management fees, they will most certainly express their support for the idea. But such monitoring may end up doing a disservice, because it is impossible to impose any monitoring. Why? Most importantly, we must note two points. In case fees are low but returns are equally so, all will be in vain. As also pointed out by Miriam just now, the return rate of some funds is just 3%. The level of fees may be merely 0.5%. But after subtracting 0.5% from 3%, only 2.5% will be left. On the other hand, if the return rate is 8% and the level of fee is 2%, there will still be a return rate of 6%.

Actually, we should look at the issue from both sides, not simply at fees. But of course, it is impossible to monitor investment returns. Is it possible to set down any mandatory rates of investment returns? Well, if there are really any such funds, I will certainly buy them. The existing capital preservation funds can only preserve the capitals, and do not guarantee any returns. Therefore, as a slogan, the monitoring of fees is certainly very appealing. But how can we impose any monitoring? I believe that disclosure of market information, transparency and market competition are one of the solutions. But I also think that Mr WONG Kwok-hing is well-intentioned and I do not want

employees to be abused by fund managers or trustees either. Therefore, the Democratic Party has no alternative but to abstain from voting on his amendment.

Mr Andrew LEUNG's amendment seeks to make clear such a compromise, to make sure that my amendment will only allow employees to choose trustees for their own contributions. I think it is more feasible for the Government to do so when amending the legislation. This can make the whole system..... After employees are allowed to choose trustees for their own contributions, after some time..... This is not entirely without any justifications. We may look at the matter from another angle. After his employees have selected their trustees, an employer of, say, 2 000 employees may have to deal with 200 funds. But as far as his contributions are concerned, he may deal with the MPF schemes of all the 200 employees in one single fund. Such was the original intent, and administrative expenses can be reduced in some measure. But when employees have choices, the employer must inevitably decide whether to choose to deal with 20 employees, 20 or so employees or 200 employees in one single fund. Therefore, administrative expenditure will surely increase when employees are allowed to switch their trustees.

With these remarks, I shall propose my amendment later on.

MR CHAN KAM-LAM (in Cantonese): President, when it comes to the MPF System, I believe Members can still remember that 10 years ago, exactly in 1997, we were also scrutinizing this piece of legislation. At a meeting on 1 April 1998, we finally managed to pass the existing ordinance after overcoming many difficulties. During the scrutiny process, we made a lot of efforts and put forward lots of advice on how to perfect the MPF System. However, although we did put forward many suggestions, the Government simply did not accept them. But we can now see that the Government is prepared to take a step forward when it comes to the proposal on allowing employees to choose MPF schemes. It is necessary for it to do so in view of the overall trend in the past 10 years and the experience of implementing the MPF System in the last six years.

According to the statistics on MPF schemes, as at the end of March this year, there were 2.3 million preserved accounts. This represents an increase of more than 100% when compared with the 1.1 million or so preserved accounts in the same period of 2004. The rate of increase is very astounding.

The development of MPF in Hong Kong has a very short history of only about six years. But if we look back, we will see that as early as 1998, when the legislation was passed, we already maintained that preserved accounts under the MPF System would pose a very serious problem of costs management and produce adverse effects on investments. Therefore, we proposed at that time that the Government should establish an employee-based "red passbook" system. We called such a system a "red passbook" system for the sake of simplicity, so as to make people realize that every employee would have their respective accounts, that employees could switch the contributions to these accounts to their new employers, and that it would be easy for employees to check the latest position of their investments.

Later on, we expanded the idea of the "red passbook" system and proposed a system of "portable" personal accounts. We pointed out at that time that only this could effectively enhance market competition, and in turn help improve services and lower MPF management fees. From the development of the MPF System in recent years, we can notice that overall, there is an obvious lack of competition in the MPF market. We know that there are only 19 MPF trustees, and the choices of funds and schemes are very limited. What is more, the employees and employer of the same organization must make contributions to the same account. And, employees are not offered any choices, as they can only choose from the various schemes offered by the trustee. There is no competition in the entire market. Banks and trustees alike do not need to make any efforts to improve their services or lower their service fees. But still, contributions will keep coming in. We also notice that the changing of trustees has been very rare. For all these reasons, even though management fees are high, there has been no downward adjustment, and such fees have therefore greatly eroded the accrued retirement savings of employees.

In 1998, we already gave such a warning. Besides expressing our worries about "refusing hire" and exorbitant management fees, we also warned that fund investments might be eroded. It now seems that we were correct at that time. Therefore, we maintain that the DAB's proposal on establishing a system of "portable" personal accounts was both correct and full of foresight.

The DAB conducted a telephone opinion poll last week, with a view to gauging the current views of employees on MPF investments. According to the findings, close to 74% of the 564 valid respondents said that they had never changed the composition of their MPF investment portfolios. Forty-one

percent of these respondents thought that it was not necessary to do so. Twenty-six percent of them disclosed that the idea had never occurred to them. Twenty percent of them said that they did not know how to change the composition of their investment portfolios. Eight percent of them thought that it was very troublesome to do so, as it was necessary to fill out forms, make withdrawal and look for another trustee. They therefore did not want to make any change.

Besides, we also found that 60% of the respondents did not know the amounts of management fees they must pay to their MPF trustees. They were not aware of this. Their trustees might have provided some statistics, but they never looked at them because the accrued sums (that is, individual contributions) were by no means large. What is more, they must wait 20 to 30 years before they could get the money and put it all in their own hands. Therefore, to many of them, the money was just money deposited in their accounts. They did not bother about this at all. Another reason is that since they had no power to handle the money, they could only leave the money in their accounts and make contributions every month after receiving salaries from their employers.

The findings can show that employees are clearly distrustful of the MPF System. Members must not mistake their indifference for trust. Actually, they all think that the money does not belong to them. But we maintain that employees should instead pay more attention to the money. The existing mechanism is problematic, because employees themselves do not have any say. This has reduced market competition and publicity and in turn employees' understanding of MPF. They simply do not know how to make choices. Even if they are given chances to change trustees, they may not necessarily do so, because they do not know much about the market. We therefore think that if we are to increase employees' interest in getting to know MPF, we must give them the right to choose their own MPF trustees. As a matter of fact, 75% of the employees who were interviewed in the survey agreed that they should be given the right to make choices.

President, it is especially worth mentioning that as the economy is in such good shape, employees will change their jobs more frequently. One employee may change his job twice or even thrice within two to three years. Under the existing mechanism, such "dormant", that is, inactive, accounts with small deposits will only continue to increase incessantly. We believe that only "portable" personal accounts can solve this problem.

What is more, we believe that if the market is not liberalized, we will not only fail to lower fees but will also fail to enhance service standards. Therefore, Hong Kong as an international financial centre will be gravely affected if the present system is not changed. As members all know, the accrued volume of MPF contributions has become bigger and bigger all the time. As at yesterday, the amount stood at some \$200 billion. Given that the total amount is some \$200 billion, annual management fees will be as much as \$4 billion even if they are charged at an average rate of 2%. In other words, some \$4 billion of the \$200 billion account balance accrued by all employees is paid as management fees.

We think that this amount is really much too large. We therefore hope that in the discussions this time around, the Government can show an intention of liberalization. We maintain that this is an important step forward and hope that as time goes by, the market can be liberalized step by step. We have heard some employers say that every year, employees should first withdraw their contributions and then deposit the money into their own accounts. We do not think that this is a desirable measure, but we will accept it as an interim measure. And, we hope that in the future, employees can be permitted to choose trustees for their own contributions. We maintain that this is the only way to help increase competition in the MPF market.

Thank you, President.

MR WONG KWOK-HING (in Cantonese): Madam President, I have brought along a money-box to explain my amendment today.

As Members know, "MPF for the future" is a slogan of the MPF System. It means that savings are for supporting one's life in the future. To save for the rainy days is to provide retirement protection. But the question is, "Can the MPF System really protect our future?" What improvements are required for the existing MPF System? I think improvements are needed in several areas.

I think the first thing is that we must tackle the "encroachment" of MPFs by administrative charges and management fees. On the one hand, we make contributions every month. Both employers and employees make contributions every month. On the other hand, however, we notice that there is a loophole in the MPF System. Trustees can "encroach" upon MPFs through the imposition

of administrative charges and management fees. And, the rates of such charges and fees are rather high, as high as 2% on average. What does 2% mean in actual money terms? Given that the accrued amount of MPF is currently \$211 billion, we can compute that as much as \$4 billion a year is taken away. The rate is really astounding.

And, when it comes to investment returns, suppose the return rate is 4% — this is the rate in general and it may be higher in individual cases — how much will be left for employees when 2% or 3% is siphoned off as fees and charges? Only about 1% will be left. That being the case, I think the Government must deal with the unreasonable practice of encroaching upon MPFs. It is only in this way that the interests of employees can be protected. This is the first thing. I hope the Government can give serious thoughts to it.

The second thing is that under the existing MPF System, employees are not permitted to choose trustees. All is just like arranged marriages in feudal times, where everything depends on match-makers, that is, employers. And, employees do not have any right to choose trustees. This system must similarly be changed, because when employers choose trustees, they will invariably give priority consideration to business connections. They will not consider the fact that employees should also have the right to make their choices. Therefore, I very much hope that the Government can make some changes in this respect. If it refuses to do so, it will do unfairness to employees.

Madam President, since the very inception of the MPF System, the offices of the Legislative Council Members belonging to the Hong Kong Federation of Trade Unions (FTU) have been permitting all their employees to choose their trustees freely. All our employees can cast a vote to choose the trustees for both their own contributions and their employers' contributions. Our employees are thus very happy. They have told us that since they can freely choose their "lovers", that is, their trustees — I am of course talking about the making of a collective choice, a process whereby all employees can cast a vote to choose their trustees — they can choose some trustees deemed to be reliable and capable of bringing high returns. They have even told me, "Even if your offices are shut down and do not pay us any salaries, we will not have any worries because the return rates are quite high." We maintain that the Government should promote such a practice instead of adhering to something like a feudal system, under which only employers, not employees, can make all the decisions. Naturally, it is reasonable for employees to make a choice once a year.

The third thing I wish to talk about is the need for transparency and access to information. If there is transparency and access to information, monitoring will be more effective. Actually, the type of regulation mentioned in my amendment is precisely about this point. This is related to disclosure on a named basis. Currently, both the Government and the MPFA do not disclose information on a named basis. Therefore, it is not enough to disclose generally the administrative charges and management fees of the six types of funds. Actually, the names of all the 400 or so funds should be disclosed. In this way, employees can make their own comparison. They can know the management fees involved. Not only this, they can also better understand the various funds in terms of risks, assets, return rates and performance over the years. In this way, when the whole system can be so transparent, there will be greater protection for employees.

In addition, I think that the problem of default contribution must be solved. It is hoped that the Government can clamp down on unscrupulous employers more vigorously. Default contribution is not only "encroachment" but also downright "robbery". Under the MPF System, employees and employers are supposed to make their respective contributions. Employers' contributions are in fact part of employees' wages. Why is there such a loophole which makes it possible for employers to default on the payment of contributions? The contribution day is now the 10th day after the relevant contribution period, and there is a one-month settlement period. In case of a complaint, it will take the MPFA two months to complete its investigation. Totally, it will be almost 100 days. We observe that some unscrupulous employers will make contributions only when there are complaints against them and when they are urged to pay the contributions required. This is in fact no different from payment in instalments which is most unfair.

According to the statistics of the MPFA, there were totally 10 594 complaints in 2004-2005. Last year, there were 10 647 complaints. On average, there were 40 complaints per day, and 70% of these complaints were about default contribution. What made those unscrupulous employers so blatant? The only reason is that while penalties are light, no employers have ever been penalized severely. According to statistics, the highest fines have never exceeded \$3,000 on average. In that case, why should they be afraid? They will simply continue to delay the payment of contributions. Therefore, the MPFs of employees are subjected not only to "encroachment" but also downright "robbery".

Actually, MPF contributions are by definition part of employees' wages. Failure to pay wages within seven days after the wage period is an offence. Why does the Government condone all those unscrupulous employers who delay MPF contributions month after month?

Recently, we held a press conference, in which we mentioned a real case involving an unscrupulous employer who had defaulted on making MPF contributions for one whole year since last year. When one of his employees reported the case to the MPFA, he threatened the employee, saying that he would dismiss him. This shows clearly that there is a big loophole in the existing ordinance. I therefore hope that the Government can consider amending the legislation. Default contribution should be treated in the same way as wages in arrears are dealt with. Failure to make contributions within seven days after the contribution period should be made an offence. At the same time, the penalties should be raised to a maximum fine of \$350,000 and a prison term of three years. Only this can achieve some deterrent effect.

What is more, in order to make sure that employees can know in good time whether or not their employers have made contributions punctually, we very much hope that something similar to "bank passbooks" can be introduced. Such "passbooks" can enable employees to know the situation at any time they like. But the Government claims that there are difficulties. In that case, can any cards be issued? Or, is it possible to set up an enquiry hotline? We understand that the MPFA is working in this direction. But we hope that the idea can be put into practice as early as possible.

Mr SIN Chung-kai remarked just now that it would be difficult to implement the kind of regulation mentioned in my amendment. His view is actually wrong. As mentioned in my amendment, if there continues to be no improvement, the Government should consider the enactment of legislation. Why does the Democratic Party have reservations about this? I feel puzzled and hope that the Democratic Party can change their position. If further disclosure and further enforcement actions still fail to improve the situation, the Government will really need to consider the enactment of legislation. The loophole mentioned just now is a good example. The Secretary will certainly see the plugging of this loophole once legislation is enacted. The MPF contributions of employees will not be subjected to any more "encroachment" or "robbery".

Thank you, Madam President.

MR ANDREW LEUNG (in Cantonese): Madam President, MPFs are not any welfare benefits provided by the Government. Rather, they are the savings amassed bit by bit by both employers and employees to provide for the latter's retirement life. Therefore, when MPFA Chairman Henry FAN remarked that the charging of MPF fees was marked by low transparency, and that 38% of an employee's 40-year contributions would be pocketed by trustees as management fees, there was a huge public outcry and people all demanded trustees to lower their fees. Since then, we have heard many opinions. The motion moved by Ms Miriam LAU today can give us an opportunity to discuss this issue, work out some measures for the MPFA and fight for the greater protection of people's interests. For this reason, the motion topic today actually transcends partisan struggles.

The Liberal Party basically accepts Mr SIN Chung-kai's amendment. However, since his amendment does not state clearly whether employees should just be allowed to choose trustees for their own accrued benefits, I have put forward a further amendment, in the hope of clarifying this point.

The Liberal Party thinks that it is reasonable for the MPFA to consider the idea of allowing employees to choose trustees and transfer their own portions of contributions to the trustees they prefer. The reason is that an appropriate increase in the competition among various trustees will hopefully lower management fees. However, Mr SIN cannot notice one point. When it comes to the choosing of trustees, the current practice is that while an employer makes contributions to one trustee, his employees will make contributions to a different one. For this reason, the employer does not have to face any huge increase in administrative workload and expenses. This practice can be described as beneficial to both sides.

The large organization for which Mr SIN is working happens to be one of the largest trustees and managers in the MPF market. If this organization allows all of its employees to choose from the several dozen trustees in the market, its administrative workload will surely increase drastically, and it may even fail to cope as a result.

We wish to restrict the switching of trustees to the portion of employee contributions because the other half of the contributions is made by the employer. For this reason, we cannot bar employers from participation and making choices in the process.

Since the administration, staff welfare policies and risk-bearing ability of all companies are different, employers should be allowed to choose the trustees they deem fit on the basis of performance, fees and support services. Employers must also make contributions, so it will not be fair to deprive them of the right to choose trustees. As mentioned by Mr WONG Kwok-hing just now, after employers have selected their trustees, employees may still choose between the funds offered by the trustees concerned. Employees, therefore, do have choices. It is not true to say that they must listen entirely to their employers.

On the frequency of changing trustees, we do not think that the frequency should be too high. Earlier on, the MPFA suggested that a change should be made only once a year. We think that this is reasonable.

Mr SIN Chung-kai's amendment suggests the addition of new provisions to the Code on Disclosure for MPF Investment Funds to require MPF trustees to further disclose the levels of fees and charges for constituent funds of a similar nature. It is believed that this may help increase the transparency of MPF fees. But we are worried that the definition of "of a similar nature" may be unclear and vague. For example, classifications based on risks, investment regions and investment tools will lead to different outcomes. As a result, we may end up having 19 different classification methods from 19 trustees. This is very confusing. And, what is more, this may give trustees an excuse for not disclosing the fees information of a particular fund or for disclosing data based on the classification methods to their advantage.

I have therefore proposed a further amendment, requiring trustees to disclose the levels of fees and charges for the "various" — I repeat, various — constituent funds managed by them, so that employees can have access to more comprehensive information. As a neutral organization, the MPFA may also make objective comparisons on the basis of such information, thereby enabling employees to make clearer comparisons and choose the trustees and MPF schemes they prefer.

Madam President, the Government often advises the public to make things all very clear before buying any funds and stocks. It also advises the public that there may be fluctuations of the investment market, and that people must not allow themselves to become a "soft touch". MPFs are not any welfare benefits

provided by the Government. Rather, they are the savings amassed bit by bit by employees to provide for their retirement life. Therefore, while we want to know the levels of management fees charged by trustees, we also want to know, more importantly, whether they can really help us earn money, or their capability of earning money.

In the first quarter of this year, the person in charge of a local fund management firm wrote an article, in which he cited two extreme examples. The first example was an investment portfolio comprising the eight funds with the best performance. The other example was an investment portfolio that comprised the eight funds with the poorest performance. The return rates of these two portfolios were respectively 67.34% and 26.36%, with a difference of some 41%. But the market risks were just the same. This shows that as far as the choosing of MPF trustees is concerned, while paying attention to management fees, we must attach equal importance to fund performance.

I think that to achieve this goal, the MPFA should require trustees to disclose their investment results and long-term returns. Banks, insurance companies and financial consultants will offer detailed analysis to their clients when marketing their products. And, they will also report to their clients on the progress of investment at regular intervals and in standardized and readily comprehensible formats. The fully liberalized financial market is capable of doing so. Why is it impossible for MPF trustees to do the same? Another point is that such disclosure can help the MPFA monitor the performance of MPFs effectively and increase their returns. And, when employees make contributions, they will not be so "ignorant", just like a "little lamb" lost in the entire MPF System.

As a matter of fact, MPFs are frequently criticized for yielding low returns. In 2006, the highest MPF return rate was 15.91%. But things were different if we made investments ourselves during the same period. In the stock market, the Hang Seng Index rose by 34.2%. The Hang Seng China Enterprises Index rose by 94%, and the Shenzhen-Shanghai Index even rose by 121.02%. Obviously, MPF investments are lagging behind overall market performance.

We often say that competition breeds progress and creates favourable conditions. Once we introduce a highly transparent system whereby MPF

trustees must seek to attract more clients on the basis of management fees and investment returns, they will naturally make active efforts to improve the management of funds within their portfolios. This will benefit both employees and employers and provide the former with greater retirement protection.

Madam President, I so submit.

MR JEFFREY LAM (in Cantonese): Madam President, before I formally explain why I have proposed an amendment today, I wish to briefly discuss the investment performance of MPFs. There was a boom in the stock market last year, and Hong Kong stocks scaled new heights time and again. Earlier this year, and for the first time in the history of the local stock market, the Hang Seng Index even once exceeded 22 000 marks. Many investors reaped huge profits, and for this reason, the average annual return rate of MPFs also increased by some 1% to 8.21%. But such an increase is just of statistical importance, because the money invested by employees in MPFs may well be encroached upon by the annual management fees charged by MPF trustees.

The reason is that the rate of management fees can be as high as 4.1% in some cases, and the average rate is roughly 2.06%. Assuming that an employee contributes \$2,000 a month and the annual return rate is 5%, he should have accrued \$3 million in contributions after 40 years. But if the rate of management fees is 3%, he will only get some \$1.5 million at the end of the day. Elderly retirees are often weak and more vulnerable to diseases, so I believe that even the original amount of \$3 million will just be enough to support their living. But now, only 60% or half of this amount will be left, so they will surely be very hard up.

It is an incontestable fact that MPF management fees in Hong Kong are much too high. In the United States, for example, the rates of management fees range from 0.4% to 0.6% only. But the services there are much more variegated than those in Hong Kong, and even online buying and selling of funds is possible. We may also compare MPF management fees with those of other local funds. In the case of the Tracker Fund, the rate of management fees is merely 0.05%. But in the case of those Hang Seng Index funds under certain MPF schemes, the rate of management fees is as high as 2%, that is, 40 times the management fees of the Tracker Fund.

This can show that MPFs are not fully able to amass the wealth required by people for a secure old age. Worse still, the hard-earned money saved by people over all the years is encroached upon by exorbitant management fees instead.

Suppose MPF return rates are satisfactory, people may still find the whole thing worth the while despite the high management fees. But the fact is that MPF return rates have all the time remained not quite so satisfactory. Last year, for example, although the average MPF return rate was 15.91%, we must not forget that as pointed out by Mr Andrew LEUNG just now, the Hang Seng Index soared by more than 34.2% during the same period. An ordinary person who picked any blue chip stock or red chip stock for investment would have got the same return rate or even a higher one.

We may also look at the average return rates for the various types of MPFs in the past six years. Equity funds and mixed assets funds, which yielded a return rate as high as 8%, were two exceptions. All the other types of funds, that is, guaranteed funds, capital preservation funds and money market funds, yielded very low return rates, standing respectively at 1.86%, 1.18% and 1.06% only. Such rates are miserably low. After the deduction of high management fees, there may be losses instead of profits; and, it may even be impossible to preserve capitals and recover the costs incurred. If people simply deposit the money in banks for interest, then even without doing anything, they can already get a return rate higher than those of MPFs. Some banks have issued certificates of deposit carrying a fixed term of several years. The minimum purchasing price is just a few ten thousand dollars, and the annual interest rate may be as high as 4%. Several years later, the account holder can withdraw the deposit together with all accrued interests. One simply does not need to fear that one's money may be eaten all up by management fees.

Therefore, the Government should really consider the possibility of widening the range of MPF investment products. People should be allowed to choose investments in "red passbook" accounts instead of always having to invest in funds, lest people's hard-earned money may all be spent on keeping fund managers well-fed while they themselves are left with very little money in the end.

In the following part of my speech, I wish to say a few words on why I have proposed an amendment to Mr CHAN Kam-lam's amendment. The

reason is that Mr CHAN's proposal on portable individual MPF accounts does not specify that the arrangement is restricted to the portion of accrued employee investments.

Madam President, as Members all know, MPF management fees are very high and this will encroach upon employees' retirement benefits. Having laboured for half of his lifetime, an employee may think that he can live on his MPF benefits after retirement, and that he can live a secure old age without having to rely on others. But it is highly probable that high MPF management fees may prevent him from getting his legitimate benefits. This surely defeats the original intent of implementing the MPF System.

Therefore, we also agree that employees should be given more options. It is hoped that through enhanced competition, we can effectively lower MPF management fees. In order to pre-empt any huge increase in employers' operating costs, we think that one possibility is to allow employees to choose the trustees they prefer only for the accrued benefits related to their own portions of contributions. And, employers should continue to be responsible for their own portions of contributions.

We maintain that such an arrangement is only reasonable because, with this arrangement, both employees and employers can continue to make the arrangements they deem suitable for their respective portions of contributions. Everybody will get what he or she wants. Although MPFs are meant for employees' retirement protection ultimately, we must note that employers too must also make half of the contributions. If an employee resigns after working for his employer for a period of time, the latter's contributions can be used to offset the long service payment or severance payment due to him.

Of course, the biggest problem is how an employer is going to deal with 10 trustees all at the same time. I believe this will increase operating costs (*the buzzer sounded*)

Madam President, I so submit.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I think this motion topic..... How should I put it? I think this motion topic is not only about administrative charges. And, Members' remarks today have actually

gone beyond administrative charges. I have been listening to Members' speeches, and I notice that they have actually repeated the various views put forward by us in 1995 when the MPF legislation was being scrutinized. But the conditions at that time were different from those of today. It has been seven years since the MPF System was implemented in 2000. All the problems we mentioned at that time have by now surfaced one by one.

Mr SIN Chung-kai said just now that I was charismatic, so charismatic that Mr Rafael HUI had to agree to implement the capital preservation funds proposed by me at that time. But what he agreed to implement is not quite the same as the mutated capital preservation schemes now operating. They are entirely different. The original intent of the capital preservation schemes I proposed was that the Government might..... There are currently two types of schemes, namely, industry schemes and master trust schemes. We proposed that the Government implement one more type of capital preservation schemes, under which the Government was to play the role of the banker. This is actually similar to the practice adopted by the government of Chile. Whenever there are any problems in the course of investment or whenever there is any shortage of principal, the Government will pay up the shortfalls. The authorities of course rejected the idea. How would Rafael HUI agree to this? SIN Chung-kai must remember this point. He must not remember just part of the whole story and forget the rest.

The other type of capital preservation schemes I proposed is linked to the interest rates for "red passbook" accounts. The authorities did not agree to this idea either. In the end, they put forward a type of so-called capital preservation schemes, but these are not capital preservation schemes as such. In comparison, the type of schemes similar to central provident fund schemes as proposed by the FTU We said that from this perspective, we agreed to and appreciated those schemes which, they claimed, should be handled by "fund people", and which would perform better than central provident schemes. We said that we might just give it a try. But we also asked why it was impossible to implement a type of schemes similar to capital preservation schemes. I can remember clearly that I cited the experience of Chile at that time. And, I can also remember that my proposal was based on the research findings of the Legislative Council Secretariat. Only that the Government did not pay any attention to us. I therefore hope that SIN Chung-kai can remember the whole story more clearly instead of just saying that I was so charismatic.

Madam President, we also discussed administrative charges at that time. We asked, "If, in the future, administrative charges are found to be eroding principals, what are we going to do?" The Government frankly did not listen to our school of thoughts. By now, our worries have proven to be justified. The rate of administrative charges is as high as some 2%. In other places in the world, the rate of similar funds (such as the retirement funds in American companies) is lower than 0.5%. I believe there must be many stories behind that.

Frankly speaking, if the Government refuses to take any actions when faced with the present situation..... We in the FTU already said at that time that we did not like the MPF System. We have always maintained that only the implementation of a central provident fund system can solve the problem. The only thing was that given the situation in the Legislative Council and the booming economy at that time..... I can still remember that during the scrutiny of the bill concerned, the principal official in charge was Pamela TAN, and she came to us with information about some 30 funds. She kept saying how those funds were better than central provident funds and how wonderful private funds were. And, there were also the opinions in society. Some middle-class people even thought that we had no confidence in government investments, and that we had confidence in funds only.

For all these reasons, when the Government implemented the MPF System, many in society expressed dissenting views. For example, we supported central provident funds. But when the legislation was eventually put before us, we must stick to the role of the Legislative Council..... We in the Legislative Council therefore passed the legislation in 1995. But as legislators responsible for scrutinizing the legislation, we did raise all these problems. It was a pity that the Government did not heed our words. All sorts of problems have thus emerged — high administrative charges, failure of capital preservation schemes to preserve capitals and even the grass-roots people's possible loss of this "morsel".

Madam President, I can remember that right after the inception of the MPF System, the Government invited the several Legislative Council Members from the labour sector to sit on an advisory committee of some sort, so as to appease us. We were even invited to appear in a short promotional film and read out this slogan: There will be protection after retirement. I replied that I would not read out this slogan. Rafael HUI's present secretary, Mrs KWAN,

was the secretary to the MPFA at that time. She even supplied a script to us. But we told her that we would not follow it.

Basically, I think that this "morsel" is just better than having nothing. If nothing is done, the situation will be worse. Therefore, having whatever something is always better than having nothing. But that again, if it really wants to do a good job, the Government should admit one thing..... It is alright even if the Government does not fully implement a central provident fund system. It may instead implement half or one third of such a system. This means that it can simply adopt a master trust scheme, industry schemes and capital preservation schemes and then serve as the banker to pay up any shortfall. But will the Government do so? I think this idea merits the Government's consideration.

I can foretell that if the Government does not tackle the problem today, then after another seven or 10 years, at which time the MPF System will have become bigger in scale, we will see a repeat of what is happening today. The grassroots will similarly..... Frankly speaking, I must say that the many Members who have spoken tonight have not mentioned the factor of inflation. During the course of scrutiny years back, we already asked them what should be done if contributions were eaten up by inflation, leading even to the disappearance of the "morsel". It was because of such worry that we put forward our proposal on capital preservation schemes, asked the Government to act as the banker, and cited the case of Chile and mentioned "red passbook" interests. But the Government did not accept any of these proposals.

Anyway, now that the MPF System has already reached the present stage, we do think that it is a good thing for the new MPFA Chairman, Mr Henry FAN, to uncover this problem. But we still hope that the Government can seek to tackle it. At this juncture, I must foretell one more thing. If they continue to offset, offset, offset (I should not lose my temper) I think this is a very big problem. Madam President, why do I say so? (I must remain calm, so I must pause for a while)

In case a person changes his job several times during his lifetime and very unfortunately, he must claim long service payment or severance payment every time, he will have nothing when his working life comes to an end. At that time, I moved a Committee stage amendment, but Members also know the outcome — it failed to pass. Later on, I raised the issue again, but once again, all was in

vain. If the Government still refuses to squarely address the impacts of offsetting, I must say that it is an irresponsible government, one which is unwilling to bear any responsibility for Hong Kong's future. If all employees really lose even this "morsel" at the end of the day, if all the contributions concerned are offset, our poor employees will in time become poor elderly people who must apply for Comprehensive Social Security Assistance.

I think this is a problem that affects the whole society. That is why I have repeatedly advised the Government. We are discussing the issue again today..... I must thank Ms Miriam LAU for shifting the perspective of our discussions to management fees. At this very time, we should really discuss other related problems more thoroughly again. If we do not do so, how can there be any retirement protection? Strictly speaking, the only beneficiaries are the middlemen, the trustees. I do not think that there are any benefits for the grassroots and workers.

PRESIDENT (in Cantonese): Time is up.

MR LEE CHEUK-YAN (in Cantonese): President, the motion debate today is on the management fees for mandatory provident funds (MPFs). This is in fact only one of the many problems with the MPF System. Structurally, the MPF System is plagued with problems.

Years ago, I also opposed the establishment of the MPF System. There were several reasons. First, in theory, MPFs are meant for the provision of retirement protection to workers. But as Members also know, in the case of low-wage workers, the amount of MPF benefits they can amass will still be very small at the end of the day even if they make contributions for 40 years at the rate of 5%. The money may well be used up after several years. Therefore, they will not enjoy any retirement and livelihood protection all the same. MPFs are basically meant to offer retirement protection to workers, but in practice, such funds cannot serve the desired purpose. The reason is that the incomes of low-wage workers are very meagre, so there cannot be much protection. As for middle-class people earning medium incomes, they can buy funds and make savings on their own. Can medium-income people really receive any assistance? The assistance is very limited.

MPFs are unable to provide any assistance to low- or medium-income earners; not only this, there is yet another big problem. Years ago, I moved an amendment on the offsetting of MPF contributions against workers' severance payments. But my amendment was negated. This made me oppose the MPF System even more strongly. The reason is that workers' severance payments should in fact be paid by employers, but then employers' MPF contributions are used to meet such payments. Therefore, when a worker eventually retires, he will not receive even one single cent.

I think the Government is very hypocritical. It tells workers that the money cannot be withdrawn in times of unemployment, and that they can only withdraw the money at the age of 65 when they retire. It also tells them that withdrawal before that is only possible in the case of permanent departure from Hong Kong, total incapacity resulting from permanent disabilities or permanent non-employment. But then, when workers are dismissed by their employers, their MPF accrued benefits can be withdrawn and used to offset the long service payment and severance payment due to them. Isn't this hypocritical? The Government vows that it is very concerned about workers' retirement protection, but when it comes to the offsetting of severance payment against accrued MPF benefits, it simply shows no concern about workers. It is only concerned about employers. It just wants to make sure that employers do not have to pay any severance payment.

I did not have an opportunity to speak just now. It is fortunate that I can do so now. Mr Jeffrey LAM talked about double benefits. I think that is total nonsense. How can there be any double benefits? At any rate, employers must always pay severance payment, and this is a staff benefit they must provide. In terms of purpose, severance payment and MPFs are two entirely different things. Severance payment is meant for enabling workers to support their living in times of economic restructuring or unemployment. But the purpose of MPF is to offer protection to workers when they reach the retirement age of 65. The two things are completely different. I think it is extremely unreasonable for anyone to mingle these two things and talk about double benefits.

Years ago, I opposed the MPF System because I was of the view that the only ultimate solution to the problem of retirement protection should be a "territory-wide retirement protection scheme" or a territory-wide old age pension scheme as proposed in the motion preceding the MPF issue. This is in fact a proven approach adopted most extensively in the whole world. Under such a

scheme, employers, employees and the Government will all make contributions to a common pool. And, money is drawn from the pool to provide elderly people with immediate retirement protection. That way, when employees reach old age, the young generation will support their living. This is in fact the most reasonable system. There is no need to fear that large portions of accrued MPF benefits may be eaten up by administrative charges or management fees.

The existing MPF System is all about a transfer of wealth from the poor to the rich. Poor people's money is transferred to MPFs, and some people thus make very big money. But the hard-earned savings of poor people..... most of their savings or 40% of their savings..... Members all know that a 2% administrative charge will mean a 40% reduction of the accrued retirement benefits at the end of the day. An annual rate of 2% will mean 40% of all accrued retirement benefits several decades later. Such is the computation finding of the Legislative Council and also the figure provided by the Government. Members can imagine how big this transfer of wealth is. Forty percent of the poor people's hard-earned savings must be paid to fund managers. Therefore, I frankly do not know whether MPFs are meant to provide workers with retirement protection or whether they are just intended to provide funds with more money for speculation and transfer money from workers to them.

The MPF System is structurally defective. Some people now propose to tackle the problem of management fees by increasing transparency or relying on market forces. But I personally think that Hong Kong's faith in the market has been much too blind. I will raise no objection if the market can give workers more choices. But this will also lead to other problems. Workers may then have more choices, but we must not thus think that with more choices in the market, all problems will be solved and management fees will also be lowered. Increase in choices will only lead to more marketing tactics. Management fees will not be lowered; rather, there may even be increases. Why? I can imagine that if employees are allowed to make their own choices, we will start to see many more road show stalls in places such as Sai Yeung Choi Street. There will be one more kind of product. For example, they may say that there is a guaranteed return rate for a certain MPF, that the management fee is low, and that a mobile telephone will be offered as a gift. But where will all the money come from? Fund companies must hire marketing personnel. They must offer mobile telephones and television sets as gifts. Where will all the money come from? All the money will come from investments and management fees. And, management fees will not be low. Even if there is transparency, they may

still tell people that management fees are just a trivial matter, and that returns should be the most important concern. If returns are high, the levels of management fees will matter very little, they will argue. They will certainly argue like this, because even I myself also know how to present such an argument. They will say that although there is a 2% management fee, people must note that the return rate is 10%, and that there is a telephone as a gift. They will argue that after deducting 2% from 10%, 8% is still left. Therefore, I do not think that management fees will be reduced.

Therefore, my conclusion is that the MPF System will not work because it is defective in the very first place. Thank you, President.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, it has been six years since the MPF System was implemented in Hong Kong. The original intent of the system is that with the monthly contributions made by employees and employers and the related investment returns, employees can receive a substantial sum of money when they retire several decades later. That way, they can have a secure old age and do not have to worry about their daily expenses. Unfortunately, MPF trustees have been charging very high and unreasonable management fees, which account for as high as 2.06% of the total asset values on average. The hard-earned money of employees and accrued benefits from investments are thus seriously eroded. Large portions of their investment returns have in fact been "pocketed" by fund companies, which are the greatest beneficiaries of the MPF System.

Even the Chairman of the Mandatory Provident Fund Schemes Authority (MPFA), Henry FAN, is not satisfied with the high levels of management fees. In mid-May, he mentioned that employees should be given the right to choose MPF trustees, in the hope that market forces can bring forth more competition and in turn lower fund management fees.

Madam President, two weeks ago, when replying to my oral question, the Secretary for Financial Services and the Treasury disclosed that the tentative scheme being considered by the Government and the MPFA would allow employees to freely choose MPF schemes for the benefits accrued from their own portions of contributions and to change trustees once a year if need be. This is clearly a compromise. I believe that the MPFA must have considered the pressure from employers. It has probably put forward such a compromise

because employers do not want their employers to freely choose trustees for all the contributions made by both sides. During a radio programme this morning, a member of the public pointed out that a trustee which is a bank may offer various "advantages" to employers, such as more favourable interest rates, lower bank interest rates and lower insurance premiums. But in exchange, there will be higher management fees. Employers may choose such trustees in total disregard for employees' interests.

I think that the investment returns of MPF contributions can be increased only when employees are permitted to freely choose MPF trustees for all the contributions from employers and employees. According to the proposal of the Government and the MPFA, employees are just allowed to choose fund companies for the benefits accrued from their own portions of contributions. But if employees cannot choose trustees for employers' contributions, the money available for investments will be reduced by half. In the end, when compared with the benefits that can otherwise be accrued from all the contributions made by both sides, the accrued benefits for employees under the proposal will certainly be much smaller. That way, employees' retirement protection cannot be maximized all the same.

What is more, if the proposal of the Government and the MPFA is really implemented, will we see a situation under which every employee holds two MPF accounts all at the same time? Will there still be increases in employers' administrative costs? Will we see an unfair situation under which the management fees for employers' contributions continue to remain high while those for employees' contributions are lowered as desired because of competition? If the answers are all in the affirmative, the management of MPFs will become very chaotic, right?

Anyway, as a result of all the problems mentioned above, the whole retirement protection scheme will still not be entirely satisfactory as desired. For this reason, why do the Government and the MPFA refuse to make efforts to convince employers that they should allow employees to freely choose MPF trustees for the contributions made by both sides?

Madam President, when Edward PRESCOT, a Nobel Laureate in Economics, recently visited Hong Kong, he also remarked that MPF management fees in Hong Kong can be as high as 2%, so they were just too high and unacceptable. He added that the situation in the United States many years ago was similar to that in Hong Kong now. But soon after choices were

allowed in the United States, as a result of competition, rates of management fees have gone down from 2% to 1% and even below 1%. This can show that once employees are given choices, there will be greater retirement protection for them.

Actually, if employees cannot obtain adequate retirement benefits under the MPF System, they will have to apply for CSSA and the "fruit grant" when they become old. In that case, the Government will be required to increase welfare spending all the same. And, such expenditure will become very substantial as our population ages. I believe that the Government does not wish to see such a situation. Therefore, why does the Government not make early preparation by actively persuading employers and the business sector to allow employees to freely choose MPF trustees? This will only do good to the Government.

Can the Government promise that if the aforesaid "middle-of-the-road" scheme is implemented, it will conduct a further review of its merits and shortcomings within two to three years? Can it promise that it will set a timeframe for allowing employees to choose MPF trustees also for employers' portions of contributions? I hope that when replying to all these questions of mine later on, the Government can give us some answers.

Thank you, Madam President. With these remarks, I support the original motion and the respective amendments of SIN Chung-kai and CHAN Kam-lam.

MS LI FUNG-YING (in Cantonese): Madam President, before all else, I must declare that I am a member of the Managing Board of the Mandatory Provident Fund Schemes Authority (MPFA). Although I have been a member of the Managing Board for just a very short time, I can still observe that the goal pursued by the MPFA is actually in line with the theme of the motion today. The various proposals contained in the amendments are also being actively studied by the MPFA. It is believed that the motion today will help the MPFA in its future work.

Last year, when the Legislative Council debated Mr LEE Cheuk-yan's motion on "territory-wide retirement protection", I proposed to conduct a comprehensive review of the MPF System. My concern at that time was not the erosion of employees' contributions by fund management fees. Rather, I put forward the view that the loss of job security for employees, the drastic

changes in employment terms and conditions in the labour market and also the increasing risks in the financial markets would all produce huge impacts on the retirement protection offered by the MPF System.

As a matter of fact, while MPF management fees will encroach upon employees' contributions, inflation may also eat up their contributions entirely. One minimum requirement for any retirement protection scheme is that the principal of employees' contributions must not sustain any adverse impacts at the time of retirement. But it is not clear whether the MPF System can achieve even this goal. Even if an employee invests in conservative funds such as capital preservation funds, he may see only the preservation of the principal, not its value. According to MPFA regulations, if a fund fails to yield a return rate equal to the specified savings interest rate, no administrative fees must be charged. But the problem is that this does not necessarily mean that employees' MPF benefits will not be eroded. As we all know, inflation will also erode employees' retirement benefits. During an inflation cycle, savings interest rates may lag behind the inflation rate. But since the fund manager can achieve the goal of yielding a return rate not lower than the specified savings rate, the employee's MPF benefits may be eroded by both management fees and inflation. In this way, capital preservation funds will fail to achieve the effect of preserving capital. To change this situation, we must aim at value preservation instead of capital preservation. One possible measure is to link investment returns to inflation. If the return rate is low than the inflation rate, no administrative fees should be charged either. In this way, we can reduce the risk associated with the shrinking purchasing power of employees' retirement benefits at the time of their retirement. This should be the goal of capital preservation funds.

The motion today proposes to enhance competition in the MPF management market. The enhancement of competition is closely related to employees' right to choose funds. Currently, most employees are not very concerned about the investment management of their MPF contributions. In a way, they have given up their right to make choices. There are many reasons for this. Employees must work long hours, endure heavy work pressure and enjoy no spare time, so they do not want to make any more efforts to study MPF investment during their valuable rest hours. Besides, most grass-roots employees do not have any basic understanding of fund investment, and they simply do not know how to make choices. This is also one of the reasons.

Madam President, we may of course consider all proposals that may increase the transparency of MPFs, enhance competition and bring more choices

to employees. But higher transparency and more choices will invariably call for greater responsibility. Therefore, while seeking to improve the various aspects of fund management, we must remember that it is equally important to find out how we can step up education and publicity among employees, so as to increase their concern about their MPFs and enhance their understanding of MPF investment. If not, even if we make enormous efforts to enhance competition in the MPF management market and adopt many other measures, we will only get half the result with twice the effort. Thank you, Madam President.

MR LEUNG YIU-CHUNG (in Cantonese): President, the motion topic today is about MPF management fees. Why is everybody so concerned about management fees? As rightly pointed out by some Members, the reason is that management fees will erode MPFs. We are therefore worried that when employees retire, there may not be too much left of their MPF contributions. We are worried that the intended objective cannot be achieved. What I mean is that MPFs are basically meant to offer us assistance in retirement.

President, the purpose of the MPF System is very good. But the problem is that when it comes to management fees, we will always say that employees should be given choices, as this may solve the problem of high management fees and hopefully bring higher returns in the future. However, President, is the problem with the MPF System really so simple, so simple that only the erosion of our MPFs by management fees is involved? Are there any other problems? President, actually, the answer should be "no". The liberalization of the MPF management market may lead to even more problems, because many more marketing tactics may emerge. We simply do not know how they will go on encroaching upon our MPFs. Besides, they may market high-risk products, so in the end, we may loss everything, may receive no money at all.

What is more, our present discussions on retirement protection are restricted to just one group of people. Many other people are not taken care of. For example, as I mentioned in the previous motion debate, housewives are not members of any MPF schemes. What will become of them when they reach retirement age? And, how about those who joined MPF schemes very late in their working life? The return rates are so low. What will become of them? We have not yet solved all these problems. Another thing is that many employers are still not willing to make contributions for their employees.

There is also this problem. What is more, President, many employers even force their employees to become self-employed persons, so as to avoid making any contributions for them. What will become of these employees when they retire? Can we just ignore them?

President, the purpose of establishing the MPF System is to help employees cope with their livelihood problems after retirement. As we already mentioned during the previous motion debate, the elderly population is ever growing. If we continue to confine our attention to protection under the MPF System, huge numbers of people will be left with no protection when they reach old age. What are we going to do in the face of all these problems? Are we supposed to sit on them as well? Therefore, I am of the view that if we focus only on introducing remedial measures to tackle the problem of management fees today, we will be most piecemeal in our approach. We will just be tackling problems in a disconnected manner. We will never solve the retirement problems faced by employees totally.

Actually, we can now observe many problems. One can in fact say that before any advantages are even forthcoming, all the problems have already emerged. Today, we are discussing management fees only. But just now, we mentioned many workers, many employees who are forced to become self-employed persons and many people who are not included in the MPF System. What are they going to do? It seems that the Government has just been watching the situation with folded arms, without showing any concern. We should not behave like this. When we discuss any comprehensive retirement protection schemes, we should consider everybody. Why can some now benefit while others cannot?

Regarding our present discussion on MPFs, the Government is also standing on the side without doing anything. I actually have another big worry today. What are we going to do if fund managers or trustees run into trouble and "shut down" one by one (I hope this will not happen)? What will happen to workers' contributions? They may all be lost. What shall be done in such cases? Our Government simply pays no attention to these problems. President, I may be a bit negative. But our discussion on this motion topic today will become meaningless if we do not think somewhat negatively. The reason is that there is no point in talking about only positive things. We may all call it a day now.

But problems are really there. In 1996 and 1997 when we discussed the same topic, we already said that the MPF System would lead to numerous problems. We could foresee that there were bound to be numerous problems. Now, these problems have emerged one by one. I therefore think that we have no alternative but to raise our worries about negative aspects. But, unfortunately, the motion topic today can only deal with a very small number of such negative aspects. Many other issues cannot be tackled. What are we going to do?

I very much agree with Mr LEE Cheuk-yan that the whole problem is actually structural. This explains why years ago, I voted against the establishment of the MPF System. I support the establishment of a centralized MPF system, that is, what we refer to as a territory-wide retirement protection system. I believe that this is the only way to provide every citizen with protection in his or her old age. But we are unable to achieve this goal now. What then can we achieve? As I mentioned just now, many people are left with no money, no protection in their old age. They may still have to live on CSSA. Therefore, what is the merit of this MPF system?

If the Government really wants to review the MPF System, I would propose it to conduct a comprehensive review and adopt another kind of system. A territory-wide retirement protection system should be adopted to provide every citizen with genuine protection after retirement. That way, their quality of life after retirement can also be protected. If such a system is not established, I cannot allow myself to be optimistic because even if we go on discussing how to check management fees, how to lower..... I think it is just our own wishful thinking that return rates may thus increase. But the market is the market. It is volatile. How can we know what will happen to it in the future? We frankly cannot guarantee anything. Unless the Government can step in..... But the Government has always looked at this problem with the mentality and from the perspective of an onlooker. This is what worries us.

President, I can only repeat that without a territory-wide retirement protection system, old age problems will only continue to exist and remain unsolved. The heavy burden will, at the end of the day, continue to be borne by the Government. For this reason, why does the Government refuse to tackle the problem now, review the MPF System and provide more satisfactory and effective retirement protection to all people?

President, I so submit.

MR JAMES TO (in Cantonese): Madam President, the amendment proposed by the Democratic Party this time around seeks to allow employees to choose their own MPF trustees. But the amendment does not specify whether employees can choose trustees for their own portions of MPF contributions, or whether they can do so for their employers' portions of contributions. The reason is that we want to give the authorities some flexibility required for reform. To first allow employees to change trustees for their own portions of contributions is certainly an easier approach. But it does not mean that we think that employees cannot in principle choose trustees for their employers' portions of contributions.

If the Government's proposal is implemented, employees may choose MPF schemes for their own portions of contributions. In other words, only 60% of accrued MPF benefits can be transferred freely among the various trustees. Employers are still in control of 40% of these benefits. This means that in the case of some MPF schemes, there may still be the problem of excessive management fees because employees do not have the right to choose trustees. We therefore think that the ideal solution should be to allow employees to choose MPF schemes for both their own portions of contributions and those of their employers.

The authorities are of the view that the Australian retail superannuation system is most similar to the MPF System in terms of structure. The Australian retail superannuation system was established in 1992, with all contributions made by employers, and employees do not need to make any contributions. Employers' contributions are tax deductible. In 2005, Australia reformed the retail superannuation system, permitting employees to choose trustees for their employers' contributions. This is in marked contrast to the new proposal of the Government, which only allows employees to choose trustees for their own portions of contributions.

This difference can highlight the problem with the existing MPF System. Under the MPF System, employers' contributions can be used to offset severance payment and long service payment. This explains why employers have the right to select trustees. The result is that employees are not permitted to make any changes for their employers' portions of contributions. This is clearly a political compromise, one which was made when the Government yielded to employers' organizations in order to secure the passage of the Mandatory Provident Fund Schemes Bill years back. If an employee is so

unfortunate to be dismissed several times in his lifetime, his employers' portions of contributions will be used to offset severance payment and long-service payment. As a result, his retirement benefits will be reduced drastically, thus affecting his life after retirement.

A couple of days ago, Norman CHAN, the Chairman of the so-called think-tank (Bauhinia Foundation Research Centre) of the Chief Executive (also the Director-designate of Chief Executive's Office), announced a health care financing package, proposing to introduce health care accounts similar in nature to MPF accounts. We do not know whether the Government is trying to test people's responses. Anyway, we hope that the Government can really learn a lesson from the MPF System. Regarding the question of fees in particular, it must not make too many political concessions just for the sake of pushing through a health care financing scheme, lest the "mandatory health care fund" may commit the same mistake as that of the MPF System.

MPF fees are still fraught with many problems, and the authorities should try to address them squarely. In the early days of the MPF System, the Hong Kong economy had not yet recovered, and people were not familiar with the whole system. Therefore, many employees who did not want to lose all their contributions selected capital preservation funds. Even young people did so. Actually, trustees are just required to yield return rates roughly the same as bank savings interest rates for capital preservation accounts. This is not difficult to achieve. For this reason, trustees can virtually make profits without incurring any costs. Almost without making any efforts, they can "pocket" all the management fees. Bank savings interest rates are currently very low and trustees' management fees must be deducted, so employees are actually left with very little. The returns may even be lower than the fixed deposit interest rates offered by banks, because fixed deposit account holders do not need to pay any management fees to banks. Such a scheme, which is originally meant to help employees make savings, has turned out to be one which erodes their contributions. This is most unfair to employees.

We are also concerned about whether trustees will charge excessive handling fees once employees are permitted to change their choices of funds once a year in the future. What will be the levels of handling fees? Will trustees incorporate any conditions that forbid employees to switch to other trustees, to the detriment of their MPF benefits? The MPFA must thoroughly consider all

these problems, so as to make sure that it will not do any disservice and make employees suffer in the course of reform.

I so submit.

MR RONNY TONG (in Cantonese): President, the management fees of MPF schemes are high. It in fact boils down to only one problem, namely, inadequate competition. If we want to compare this to other industries, perhaps the lack of competition in the petroleum industry in Hong Kong is comparable. If we want to make improvement to the situation, in fact we need to adopt internal and external measures, both of which are essential. First, we should give consumers choices; and second, we must create an environment for fair competition.

President, many colleagues have expressed opinions on the aspect of consumers' choices. Most colleagues support that employees should at least be allowed to choose their trustees. However, President, this is not enough because at present investment companies operating MPF business mostly target at large corporations for new business. These investment companies would only concentrate on promoting their products to a small number of companies, and the concessionary offers are only applicable to the large employers, whereas employees do not have any actual benefit. Miss TAM Heung-man has also mentioned earlier that if the contributions are handled separately, things will become very confusing in future. I believe employees should be allowed to make the choices themselves.

Earlier on, I have listened to the speeches of colleagues from the Liberal Party. On such issues, they have all along held views that are different from ours. Mr Andrew LEUNG said earlier that it should be the employers who make the decisions since the contributions are made by them. He also said that if employees were allowed to change trustees frequently, the companies would have to bear very high administrative costs. President, these two points are not justifiable reasons. Of course, the companies do contribute the money, but the employees are the ultimate beneficiaries, why should generosity be granted at the expense of another party? Besides, President, the so-called administrative cost is also an exaggerated excuse because even in the present proposal, employees are still given a chance to change their trustees once a year, and the cost required is not too high. What is more, the investment companies or MPF managers

would help the companies to process the relevant formalities. The case of the telecommunications industry is a very good example.

With regard to the market, President, there are only a very limited number of investment companies that may operate MPF business. In this connection, some colleagues propose to introduce legislative control. Mr WONG Kwok-hing has made such a suggestion. One of his suggestions is to impose a ceiling on the management fees. However, President, we think that this is not a feasible solution because we all know that if a ceiling is imposed on the management fees, it would eventually end up with all the companies setting their respective fees close to this ceiling. Therefore, the ultimate solution still lies in market competition, so as to make different companies offer really competitive fees. Therefore, we think that setting a compulsory fee ceiling by way of legislation is still not a good solution to the problem.

President, we think that the best method actually lies in opening up the market, thereby facilitating the emergence of real competition in the market. Only by making use of market forces can we lower the management fees, and only in this way can we give consumers choices. Frankly speaking, we have said many times before, "You are the boss only if you have the choices." Although he may be just a wage earner, but he would prefer that he could call the shots as the boss at least after retirement and does not wish to be subject to the choice of his employer even after working as an employee all his life. I hope the transparency and competitiveness in this regard can be enhanced.

President, how can we achieve this? In fact, we have discussed this in the Legislative Council for a long time, and the Chief Executive had promised that a comprehensive fair competition law would be introduced. There are two advantages in having such a law. First, when a certain MPF trustee company has really acted in a monopolistic manner, we can have some established standards and legitimate power to investigate into the monopolistic acts. We hope that in this way, we can remove those unacceptable anti-competitive acts such as collaborative price fixing or keeping the fees at a high level in a collaborative manner. On the other hand, through our requirement of fair competition, we hope that different companies can enhance their operational transparency, so that real charging information, returns and interest rates calculation methods could be presented in a way comprehensible to everyone, so as to let Hong Kong people make their choices.

Of course, when investment targets are different or when investments are made in different markets, the figures will naturally be slightly different. But for wage earners, the most important point is how high the rate of return is. Mr LEE Cheuk-yan has said just now that if the market is really opened up, a lot of money will be spent on advertising or promoting the products to clients. Such a possibility does exist, President. However, we are most concerned about the rates of return because if the administrative fee is too high, the real rate of return will be undermined. If the rate of return is high, then even if a higher administrative fee has to be paid to the trustee, many people will still find it worthwhile because the trustee can earn more money for them. In that case, why can a higher fee not be paid? This is a commercial society. If we find the deal reasonable, though we have to pay a higher fee, why can this not be done as long as a higher rate of return can be earned? I think this is a good method of giving employees choices.

Therefore, President, we think the best method is to build up a market with real competition, so that wage earners can have choices and hope that they can call the shots as bosses after retirement.

MR WONG TING-KWONG (in Cantonese): President, since the establishment of the MPF System, which was intended to protect the retirement life of wage earners, it has time and again become the focus of attention of employers, employees and public opinions in society. Earlier on, Mr Henry FAN, new Chairman of the Mandatory Provident Fund Schemes Authority (MPFA) queried that, in view of the continuous growth of the size of MPF assets which amount to over \$210 billions now, the fees charged by trustees have thus increased substantially. Nobel Prize winner Prof Edward PRESCOT also criticized the MPF management fees in Hong Kong as being too high. Therefore, during the past few months, the issue of MPF management fees has triggered widespread discussions. I would like to make a declaration of interests. I am a non-executive director of the MPFA. Being a non-executive director of the MPFA, I am naturally very concerned about this issue.

When the MPF System was first established in 2000, on the one hand, it was an innovative thing at that time, and at the initial stage, there was very little money in the MPFs. However, on the other hand, trustees participating in the schemes had to invest considerable amounts of resources into making all sorts of preparations. In addition, in order to ensure that employees can have

guaranteed returns, there must be certain incentives to attract companies from the financial sector to participate in the schemes. It is understood that, for this reason, no restrictions on management fees were stipulated in the law. Instead, the industry was given a free rein to determine the fees. Therefore, the determination of the categories and levels of fees had to rely on market force.

At present, the average expense ratio of MPFs is about 2.06%, with the highest being 4.19%, which is obviously higher than the management fees in the United States and Australia (at 0.18% and 1.53% respectively). As a matter of fact, the retirement fund systems in different regions differ in their design, mode of operation, fee structure and mechanism as well as the method of calculations. Therefore, it would be very difficult for us to make any realistic comparison. Undoubtedly, the fees of funds will have a bearing on the ultimate benefits of employees. However, it seems unfair if we only care about the fees, without recognizing the returns yielded by the funds. As a common saying goes, "We want a good horse, and we also want a horse that does not eat grass." It is impossible. Apart from earning good returns for employees, fund trustees also have to pool and manage the contributions on a continuous basis. This does incur operating costs. In spite of the foregoing, it does not mean that the present MPF management fees are reasonable. We only think that, since the MPFs have been implemented for seven years, and the aggregate amount reaching \$210 billion, this is the right time to review the relevant fees to ensure that such fees are kept at the minimum level, thereby making the market more competitive and effective in operation.

Some people may say that employers may choose those trustees with business connection with them as their MPF trustees, and in doing so, employees' interests and needs may be overlooked. I do not subscribe to such a view because MPF is related to the offsetting arrangements with long service payment and severance payment. Employers are responsible for paying the differences between employees' long service payment, severance payment and the accrued MPF benefits. Therefore, employers also hope that employees can get sizeable accrued benefits, thus reducing their burden of making the relevant payments. This is especially so for some SMEs which have some difficulties in paying the huge amounts of long service payments and the severance payments. Therefore, employers also hope to provide employees with good retirement protection, so as to boost their sense of belonging to the companies. Under certain circumstances, we also feel that we should allow employees to choose their trustees freely, so as to enhance their autonomy and responsibility in the

MPF schemes. In addition, the introduction of competition among trustees will help to enhance the transparency of the fees charged. With a market competition mechanism, the management fees will be gradually pushed down. Of course, employees cannot switch trustees too frequently; otherwise, trustees' administrative burden will be unduly aggravated. This will affect employees' benefits which are invested by the method of Dollar Cost Average. Therefore, we propose that a certain time restriction should be specified, to allow an employee to transfer his accrued benefits of employees' contributions to his selected trustee once a year or once in one and a half years. I believe such a practice can balance the interests of the three parties, namely, employers, employees and trustees.

In addition, I suggest that consideration be given to opening up the market. Currently we have 19 MPF trustees in the market, we should introduce less than 10 new trustees into the market, so as to enhance competition. I believe the trustees would lower the various fees in order to attract more clients. Some people have pointed out that at present 80% of the MPF interests are centralized mainly in the hands of four major MPF trustees. Therefore, if there are no incentives, it will still be very difficult to enhance competition and lower the fees, even if the number of trustees has increased. However, I think this should be decided by the market mechanism. Trustees will assess on their own whether or not there is still room for developing the market and decide whether it is profitable for them to join the MPF market.

Before allowing employees to enjoy greater autonomy in selecting trustees, I think we should launch proper education and promotion drives and release information and fee schedules of the relevant trustees. In this way, employees will realize that they may make comparisons among different trustees and funds, so as to select the appropriate funds for themselves.

Finally, I oppose enacting legislation now to regulate the fees charged. Such a move will be considered only if the above methods are found to be ineffective after implementation.

President, I so submit.

MR FREDERICK FUNG (in Cantonese): President, it has been over six and a half years since the launch of the Mandatory Provident Fund (MPF) System in

December 2000. Although the System has gained maturity in terms of operation and the size of assets of the funds keeps expanding every day, problems and loopholes of the System, such as insufficient coverage, being skewed in favour of trustees' interests, have started to surface over time. The Hong Kong Association for Democracy and People's Livelihood (ADPL) believes that it is the right time to conduct a comprehensive review of issues such as the operation of the MPF System, its effectiveness and management fees, and to introduce improvement measures accordingly. It is the right time to make sure that the MPF can really provide all the people with long-term protection, so as to enable them to enjoy a really secure retirement life.

President, to understand how the MPF System is skewed in favour of the trustees, all we have to do is to take a look at the Government's reply to a question raised by me some time ago. According to the Government, the fund expense ratio serves as the best way of reflecting how management fees are charged. As of mid-2007, the average expense ratio of MPF was 2.06%, with the lowest being 0.41% and the highest 4.19%.

Calculating at MPF's average fund expense ratio of roughly 2%, if an employee has made MPF contributions for 40 years, the ultimate benefits he can receive at the time of his retirement will have been considerably eroded by 40%. To cut the long story short, if that employee's original accrued benefits stand at \$3 million before deducting any fees when he retires, all that he will be able to receive after paying off the management fee is just \$1.85 million.

If the highest ratio of 4.19% was used in calculation, the situation would be even worse. To our surprise, the employee will have to spend over 60% of his accrued benefits on paying for the management fees. President, from all these figures, we can see that the management fees are so high that as being really shocking.

The authorities attribute this to the relatively small assets size (around \$210 billion). In fact, the major cause for such high management fees lies in the right to choose. The Mandatory Provident Fund Schemes Authority (MPFA) currently only allows employers to select MPF companies while employees have no say not all in the selection process. The critical point is that employers often do not pick trustees basing on the best interests of employees. Rather, they expect their selected trustees, such as banks, can bring about some other benefits to their companies. For example, they may find it easier to obtain bank loans, or they may get lower interest rates in their loan applications.

In other words, MPF companies can make use of "alternative" means to attract employers while employees' interests will then be totally ignored.

Therefore, President, the ADPL suggests that the MPFA should, as a starting point, launch reforms in the area of employees' right to choose. This will enable the employees to regain their control in the selection process. They can then make their own choice in their best interests in selecting trustees. Under such a competitive environment, MPF companies will then lower their management fees to make their offers more appealing. In this way, the objective of lowering management fees can be achieved.

Secondly, the MPFA should formulate other measures such as conducting a thorough review of the operation of the MPF System with the objective of reducing its operating costs, thereby making it possible to lower the respective fees. The MPFA should also strengthen its supervision of management fees to prevent the charging of excessive fees. Of course, in order to facilitate the easy comparison of management fees among various funds and schemes by employees, the MPFA should specify that fund managers have to release details of the fees they charge in a uniform and standardized manner.

President, apart from the problem of high management fees as mentioned above, there are some other inadequacies in the MPF System. For example, while the current provisions governing MPF are too rigid, the enforcement of such provisions is too lax. As a result, unscrupulous employers may make use of such loopholes to delay making MPF contributions for their employees. On the other hand, due to the fear of losing their jobs, wage earners can only submit to such unreasonable exploitation. Thus, both the ADPL and I believe that there must be a thorough review of the respective law and enforcement details, so as to resolve this pressing problem for the wage earners.

In addition, what is even more ridiculous is that employers can make use of MPF contributions to offset the long service payment and severance payment which are stipulated in the Employment Ordinance. Obviously this has led to a confusion of concepts. It has totally distorted the original intention of the long service payment and severance payment and blatantly sacrificed most of the interests of wage earners — with the consent of the Government — with the purpose of reducing the employers' expenditures. The ADPL now urges the authorities to revoke such an arrangement, so that the originally entitled interests of wage earners can be protected again.

Besides, from the initial brewing of the MPF System to its implementation now, the ADPL finds that the Government has not made adequate involvement and commitment in the process. Nowadays, a critical issue of the MPF lies in its insufficient coverage and too many people being left out of this safety net. For example, the System does not provide for the retirement of housewives, low-income employees, and the elderly people now. Although it is generally accepted that these groups of people have really made enormous "tangible" contribution to society, their contribution cannot be measured in the traditional way. In addition, since they are not considered as the mainstream groups under the existing system, they may not be able to enjoy an easy and leisurely life when they get old. If they rely solely on the current welfare system, they may not be able to even maintain their basic living. Therefore, the ADPL suggests that the Government strive hard for implementing a universal retirement protection scheme by combining the MPF and the existing welfare system, so that those who are unprotected by the mainstream society can still enjoy retirement protection.

With these remarks, I support the original motion and all the amendments.

MR ALAN LEONG (in Cantonese): Madam President, we may consider this motion as the sequel to the last motion debate because the original intention of setting up MPFs is to protect the retirement life of wage earners and prevent poverty from occurring among the elderly persons. As we review the situation when the Government put forward the MPF scheme in 1995, one of the controversial points was whether privatized MPFs or a universal old age retirement protection scheme should be implemented.

As I look up the relevant records, I could see that in the debate on the resumed Second Reading of the MPF legislation, Dr Marvin CHEUNG, an appointed Member then of the former Legislative Council, already opposed the MPF scheme strongly. One of the reasons he held was, the investment return of MPFs would be easily eroded by inflation. At that time, he warned that not a single fund manager would have the courage to guarantee a return of 2%, a figure that was even lower than the rate of inflation. Today, both the motion and the various amendments have pointed out that the management fees of MPFs are relatively high and the returns are less than satisfactory. All these have proved that the warning issued then did carry justifications.

In fact, even as of today, we are still puzzled by the attitude of the British Hong Kong Government in implementing the MPF scheme. The Government then emphasized, if the MPF scheme was not passed in the Legislative Council, no other old age retirement schemes would be considered. But that was absolutely not the aspirations of the people as well as the Legislative Council at that time. Nowadays, more and more studies and data have proved that the practice of adopting only the MPF scheme and excluding all other retirement protection schemes at that time cannot guarantee that wage earners can enjoy a good retirement life.

Madam President, even if a person has made MPF contributions for 40 years, the MPF benefits he can get after his retirement can only sustain a living standard comparable to a level of 20% to 30% of his pre-retirement life. The MPF is inadequate for providing for a person's livelihood after he has retired. Eventually the elderly people will have to rely on the Comprehensive Social Security Assistance (CSSA) for the elderly to provide for their living. A scholar estimates that, with the ageing population, the proportion of elderly people receiving CSSA will rise to 24% by 2031, and the accumulated expenditure commitment of the Treasury in 30 years will amount to \$81.4 billion. If we use the Government's financial conditions in 2031 as the basis of our projection, then the Treasury will have an additional commitment that will be equal to 10% of the gross salaries tax of the year. In other words, according to this scholar, we (every one of us) shall have to pay an additional 10% of our salaries tax by then just because of the ineffective results of the MPFs.

Madam President, I hope those colleagues and friends who frequently use the reason of upholding fairness to oppose the universal pension scheme can think carefully about this: If all the people have to pay an additional 10% salaries tax to make up for the failure of the MPFs, what fairness can we say in this? How fair is it if the scheme will push one quarter of the elderly to poverty? In comparison, universal retirement protection can ensure that all the elderly people will not have to live in poverty. On the other hand, those who prefer the universal pension scheme may go on advocating the preservation of the MPF System, as a supplement to the universal pension scheme, thereby enabling those who are more capable of making contributions to enjoy an even better retirement life.

Madam President, regardless of whether the MPF will continue to be the only retirement protection, or whether it will be combined with the universal

retirement protection scheme, the operation of the MPF market must be reformed, so as to ensure that all the employees can truly enjoy what they are entitled for the contributions they have made.

Earlier on, the Chairman of the Mandatory Provident Fund Schemes Authority (MPFA), Mr Henry FAN, advocated that the system should be gradually opened up to allow employees to choose their own trustees, so as to promote competition in the MPF management market. Since at present employers choose MPF trustees for their employees, many fund management companies would bundle MPF products up with some other investment products which are offered with concessions, thus making employers focus their attention more on the concessions in picking the MPF products, instead of comparing the different schemes fully from the perspective of staff. Adopting such a perspective, we should consider granting employees the greatest right in choosing their own trustees, so as to enable them to protect their own interests. As such, employees should not be allowed to control only the portions of voluntary contributions or employees' contributions, but they should be allowed to place all the contributions in the hands of their preferred trustees.

However, in order to assist employees in making the right choices, the market must offer sufficient information. Some of the amendments propose that the administrative costs of different funds should be released. We think that this will facilitate employees' comparison of the various MPF products, which is an indispensable step in opening up the market. Therefore, we shall render our support in this regard.

Finally, I still have to stress that since we have realized that we must try our best to identify ways of plugging the loopholes in the MPF System, why do we not take one more step, to also take into consideration the old age situations of the unemployed, the low-income persons, the elderly workers and housewives? We should take this opportunity to face up to the problem, take actions to rectify it, in recognition of the shortcomings of the MPF System. In this connection, we should expeditiously introduce a universal retirement protection system which should complement the MPF schemes with adequate market competition, thus really safeguarding the benefits of retirees.

Madam President, I so submit.

DR KWOK KA-KI (in Cantonese): Madam President, there seems to be some co-ordination among motions in the Legislative Council lately. For example, we are now discussing the MPF issue, which appears to a continuation of the earlier discussion on the issue of elderly in poverty proposed by Mr Frederick FUNG.

Madam President, I would not oppose this original motion and all the amendments. Basically, since the launch of the MPFs and up till now, a very major question has always existed. How can assistance be provided to those who are currently employed or those who will soon retire, so that they can have sound financial support in order to enjoy a secure retirement life?

Since the MPF was first designed, with the lapse of so many years, and now as we take a close look at the System, we still find it unable to achieve the intention of helping the people to attain their objectives. It has become something that is neither fish nor fowl. It could have been a beautiful misunderstanding that the MPFs could help most Hong Kong people in providing them with good retirement protection. However, no matter how we work with the figures, such as how our incomes would be and so on, we still find that this is not the case.

Therefore, if we really want to steer the whole issue back onto the right track, we should not be contented with just lowering the management fees of the MPFs because this is just a small part of the bigger problem. What ultimately must be done is to design a comprehensive package of retirement protection schemes. Regarding this point, we still cannot achieve it even up till now.

Insofar as the discussion on MPF management fees is concerned, there are two-tier implications at the present stage. Recently, the Bauhinia Foundation Research Centre, nicknamed as the Chief Executive's think-tank, has proposed a scheme called Mandatory Medical Savings Account Scheme (Mandatory MSA Scheme). This medical contribution scheme is extremely similar to the MPF in many ways such as the design, contributions and even the ways of collecting funds, and so on. Therefore, this makes us realize that we must be very prudent in examining the problems brought about by this Mandatory MSA Scheme and the MPF.

As we all know, under the present MPF arrangements, employees do not have any right to choose the trustees for their MPFs. For this reason, many

MPF trustees or their relevant companies would make it their target to promote their business to prospective clients, that is, the employers. To employers, it does not matter to them which MPF trustees they should choose because they have to spend the money anyway. However, after they have made the decision, it would directly affect the amounts their employees would eventually get after making contributions for about 40 years.

This time, the incident was a bit special. The news was in fact released by the Government. Mr Henry FAN, Chairman of the Mandatory Provident Fund Schemes Authority (MPFA), disclosed that he could not accept that the management fees should be so high. It seems the Government intends to introduce some changes. I certainly welcome this. However, this is absolutely inadequate. I think at this juncture, apart from making some minor patch-up work to the operation of the MPF System, including the lowering of the management fees, we should consider the issue from the perspective of a greater market momentum by granting employees the right to choose different kinds of contribution schemes for their MPFs. Apart from this, it would be more appropriate for the Government to act proactively and positively, in order to identify a long-term feasible universal retirement protection scheme.

I do not know what kind of response the Secretary will give us later on. If his response still just covers what he will do, it seems it is not particularly meaningful. I think at this juncture, the Government should launch the second round of discussion on long-term universal retirement protection schemes, so as to study how to convert the current MPF Scheme, which fails to provide us with adequate protection, into a more stable scheme that can protect and offer concrete assistance to each and every employee in Hong Kong to enable him to enjoy a secure retirement life. This is no easy task. The new Government still has five years to go. I hope the Secretary would not act in a perfunctory manner after this discussion, or just verbally promises what he will do because it would be meaningless.

The amendments to this motion have also pointed out that there should be some other provisions, that the levels of charges should be released and be subject to comparison. On this point, I think these should have been done a long time ago. The fact that all these have been delayed until now reflects that the MPFA has not done adequately in protecting employees and people making contributions, enhancing the transparency of retirement funds and the provision of more information, and so on. It releases all these plans on its website in a

hurry only after the issue has developed to this stage when everyone realizes that improvement must be made. I think it is already very late.

Anyway, I believe this is a good starting point for the majority of employed persons in Hong Kong. However, this still cannot change one fact. That, at the age of 65, when he collects his contributions, he will find that, after doing some calculations, the money is still insufficient for him to make proper arrangements for his retirement life.

I still fail to understand the thinking of the Government. Whenever our discussion on this issue concludes that there are inadequacies, the authorities would say that we have a very good CSSA system. In fact, it is futile if the people have to rely on other schemes, including the CSSA, because the CSSA also entails the use of funds from public coffers. On the one hand, the Government says that it does not wish to see the expenditure on this continue escalating, and on the other hand, there is absolutely no progress on the issue of the universal retirement protection scheme — not even any studies are being conducted on the issue. I think the Government is producing a test paper with a "zero score" on it.

Madam President, I support the original motion and all the amendments, and hope that there can be some new changes. Thank you, Madam President.

MR BERNARD CHAN: Madam President, I would like to first declare my interest. The company which I work for has financial interests in one of the major MPF service providers in Hong Kong.

This motion refers to MPF management fees as being "relatively high", and it says that the returns are "less than satisfactory". I am not sure if all MPF service providers would agree with these statements. I believe that on average, MPF charges are lower than those of mainstream unit trusts or mutual funds, which often have front-end charges as well as various annual fees. As for investment returns, it is important to remember that the MPF is a long-term retirement savings vehicle. It is not intended to produce the sort of high, short-term returns associated with more risky investments.

However, I do agree with this motion's basic assumption that there may be scope for more efficiency, flexibility and transparency in the MPF system. We

must remember that this is a compulsory system, and the members of the MPF schemes have a right to expect the best standards of value, service and performance.

One of the features of our MPF structure is that the employer chooses the MPF service provider on behalf of all his employees. In some ways, this is more convenient for everyone. Employees do not have to research on the different service providers, and employers only have to deal with one service provider.

Recently, however, we have been hearing a lot of demands from employees to be allowed to choose their own MPF service provider, just as they can already choose which sort of fund to invest in. I believe it would be worth considering this idea. It would encourage employees to compare different providers in terms of service and performance, and it would give the MPF service providers a greater incentive not only to keep their fees down, but also to be more transparent about their fee structure.

But there would be some potential problems. It might make administration more complicated for employers. That is something we would need to address. Also, some MPF members might want to switch service providers quite a lot. That would push up costs and the costs will be transferred to the employers, and it would also possibly increase their exposure to risk. MPF members would have to take more responsibility in choosing service providers and managing their investments in a sensible way.

I am not saying this is a bad thing. It would be good if workers take full interest in studying different investment options. But the MPF Schemes Authority, employers and those of us in the industry would probably need to work together to ensure that people are informed and educated if necessary. The bottomline, Madam President, is that giving MPF members more choice would increase competition, and that would benefit them.

Madam President, I would just like to end with a comment which I overheard earlier. One of our Members here mentioned that there were only 19 providers, and only four providers controlling about 80% of the market share. One Member suggested that we should introduce more competition. The fact of the matter is that we started with almost 30 providers, but the MPF business is a very heavy-loaded front-end business, every provider invests a lot. Today, I

can tell you that it is a business of scale, so even if you want to invite 10 members to come in, no one is prepared to invest that kind of money and time. So, unfortunately, it is a business which needs to be of a very large scale, with a very large pool of employees. So, I am afraid you are not going to be able to attract any more investments into the MPF. We have already currently 19 service providers, it is a very saturated market already. Thank you.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, that little pig is very lovely, but it has been placed there for a long time. You may put it away now.

MR ALBERT CHAN (in Cantonese): President, with regard to the MPF issue, the opinions of netizens can fully reflect the feelings of the ordinary people. The Secretary may listen to them and gain some understanding in this regard. The Secretary may seldom surf on the web, but I hope he can listen to the views of the netizens. I would like to read out some views of certain netizens to give the Secretary some insight into this.

First of all, a netizen who claims to be "chinahk30" said that MPF was a major fraud fixed with collusion between business and the Government. On the one hand, it enables trustee companies to earn management fees, and on the other, the Government can save up money. The only suffering party would be the ordinary people who have to make contributions on a compulsory basis but cannot voice their grievances. Another netizen "White and Clean" said that it was not a fraud but a rip-off — an obvious attempt to exploit the people. "Taoist Black Devil" said the Government had never cheated you, but had robbed you of your money. Another netizen "King of Pirates" said the Government had done everything in the interest of the people, but only ended up in disasters. He said the officials just conceived the ideas in their minds, but had never experienced the problems and found out where the problems were. He asked, if the people had to pay for the mandatory medical fund in future, they would have to pay another contribution, how could the lower class people make ends meet? Besides, "Beef Rice with Tomato with a lot of Sauce" said that the greatest problem with the MPFs was that he could produce higher returns with his own investment portfolio — several times higher. So he felt that he was being robbed of money, yet those people still claimed to be helping him and doing him good. "Wolf of the Battlefield" said it would be even better if we invested all our money in the Tracker Fund of Hong Kong (2800), instead of making MPF contributions.

If we take a look at the condition of the MPF, President, we can see that this is absolutely a financial arrangement with high costs but low returns. Despite the boom in the stock market during the past one year, we find it terrible when we look at MPF returns this year. Let us discuss briefly the figures of about 20 MPF investment management funds. Among about 20 or so such funds, two of them have not provided any figures. Among those funds with figures, seven of them report returns that are higher than 5%, whereas the returns of the remaining 13 are lower than 5%, with the majority of them earning less than 3%, nine at less than 4%, and some being as low as 1.91%. These are the returns reported for the early part of this year to the recent period.

To our understanding, the stock market and many investments have shown relatively healthy and good development this year, and the stock exchange has even risen to a historic high this year. Given such a booming stock market, the return rates of funds were still so low, it is really a very serious problem. The Government is actually trying to shirk its responsibility. Actually we do not need to have so many management funds to manage our MPFs. It is virtually a kind of transfer of benefits. As the netizen "chinahk30" had said, it was a fraud to transfer benefits to investment funds.

I do not know how many such investment funds will recruit government officials in charge of financial matters after the latter have retired. We know that many retired senior officials from the Lands Department are now working with major property developers, such as establishing consultancy firms or working as the consultants of property developers. I also need to do some investigation to find out among those senior financial officials responsible for formulating the MPF System. How many of them have received transfers of benefits or rewards directly or indirectly from such funds? Besides, there is a very simple example. We can see that our great Motherland has recently issued Renminbi debentures with an interest rate of 3%. If the appreciation of Renminbi is also factored into our calculation, then the return rate is 8%.

With regard to MPFs, actually the Government could play the role of a banker. There was no need for it to transfer so much benefit to so many management funds, nor was it necessary for it to make the matter so complicated. There are so many statutory organizations in the Government. What impressed me most was when the core projects of the new airport were launched, the Government had not issued any debentures or had only issued very small amounts of debentures. Subsequently, regardless of the development

projects of the MTR Corporation or those of the KCRC, the Government would only obtain loans from other financial companies, and some of the lending rates were as high as 7% to 9%.

If the Government had raised funds by way of debentures and let the people receive 3% to 5% in return, many people would have been very delighted. And on the other hand, many funds would be most willing to buy government debentures. However, regarding the overall situation of Hong Kong, the Government has been pampering, tolerating and encouraging these management organizations to indulge in profiteering through the management of funds, and it is the ordinary people who suffer ultimately. The MPF is an obvious and explicit example to show that the Government has adopted such an approach to make the people suffer, to make these management organizations extort the hard-earned money from the people and earn exceptionally high management fees.

Therefore, President, if the Government does not learn the lessons from its own painful experience by reviewing the MPF arrangements, in particular the fund management arrangements, I believe a problem would eventually emerge, that is, these MPF trustees can make excessive profits but the people will suffer from the low returns. It will definitely arouse great anger from the people. Thus, in future when problems emerge again with these management funds, the people's grievances would further aggravate.

PRESIDENT (in Cantonese): Your speaking time is up.

MR JAMES TIEN (in Cantonese): President, the reason mentioned by Mr Albert CHAN in his speech just now had already been put forward more than 10 years ago in a Legislative Council debate on how protection could be provided to retirees or employed persons upon their retirement.

Many people in the commercial and industrial sectors have asked this question: Is it necessary to establish MPFs? Many companies have their own contributory pension schemes. Many employees can take care of their own financial management. Regardless of whether one purchases a property or

invests in the stocks, the investment return rates are definitely higher than handing your contributions over to certain funds for management. At that time, the Liberal Party exactly used this reason to oppose the establishment of MPF.

Mr Albert CHAN now twisted the logic to use this reason to prove that the whole scheme absolutely should not have been formulated at all. For all these funds, it is natural that their return rates are low. For all the employed persons who make the relevant contributions, since they feel that the return rates provided by their own companies in the past were higher, or that they may feel that they can get higher return rates through their own investments, so why do they need to participate in such so-called MPF schemes? At such a level and when such an enormous amount of investments are involved, the return rates must be very low.

This has exactly illustrated the truth that it is best for us to let all the employed persons to manage their own finances. If pension funds are available in the companies they work in, then they can enjoy the pension funds. But if such arrangements are not available in your company, then the company must make it up by paying more wages; otherwise, employees will resign and switch to other companies to work.

Nowadays, the pension funds of many companies have far higher return rates than that of this government scheme. What makes the difference is that they can exercise great flexibility in investment. They can buy stocks, and they can buy warrants. But for our scheme with the MPF concept, there are lots of restrictions. Of course, we strongly support the Government in conducting a review of the system.

With regard to MPFs, the past practice was adopted so that employers did not need to worry about the possible losses that might be incurred to the accrued money. If employees are allowed to choose management companies, and if all the employees opt for high-risk investments, then the employers will definitely incur losses. Now the present proposal is drawing a line in the middle, so that employers will choose trustees for the portion of employers' contributions, whereas employees will choose trustees for the portion of employees' contributions. The point raised by Mr Bernard CHAN does warrant our attention. For small and medium enterprises, if a company only employs over 10 persons, the situation will change, from one company making a choice to more than 10 persons making many choices. The process would then become

somewhat complicated. On the other hand, some management companies may find the number of accounts in this case too small. If all these employees choose different companies to manage the funds, imagine how much administrative costs would have been incurred. Is it worthwhile for trustee companies to do such work? Mr Bernard CHAN has cited an example, in which more than 10 trustee companies are involved. A certain employer has employed more than 10 employees, and incidentally each of these employees has chosen a different trustee company. Please imagine how the employer can cope with the situation? In such a situation, the employer has chosen one company, but the 19 employees have chosen 19 different companies to manage their respective contributions. However, since there is such a suggestion, I think it is a good thing after all. If the employer has the full right to choose a trustee, in order to ensure that the portion of his contributions will not run into any problem, he would probably choose the safest bank to manage the contributions, and the several investment items probably would by and large be very conservative and none of them would really reap exceptionally large amounts of money. If employees can have a choice, the trustees may prepare some new products with higher return rates.

I have frequently cited an example to say that the return rates of the Hong Kong Monetary Authority are not high enough. For several renowned universities in the United States, such as the Yale University and the Harvard University, and so on, their return rates are usually more than 10%, involving more than \$10 billion. And such return rates have persisted for over two decades. Given their high return rates, I believe the employed persons in Hong Kong must be green with envy. However, some risk does exist in this.

Therefore, I think Members should note that there is nothing like absolute gains in the world. There is no investment in the world that can yield high returns but carry low risks. In any case, the situations must be: High return rates come with high risks; low return rates come with low risks. When the return rates are very high, we probably should note that the risks must be very high as well. Anyway, there is a consensus in society that the employed persons must be allowed to make their choices, and the Liberal Party absolutely supports this. To have a small improvement is better than having no improvement at all. However, with regard to the actual situation pointed out by me just now, we should review it after it has been implemented for several years. By then, we may see that problems will still occur even after the new proposal has been implemented.

MR ALBERT CHAN (in Cantonese): President, Mr James TIEN might have misquoted me.

PRESIDENT (in Cantonese): Then you may clarify the part that has been misunderstood.

MR ALBERT CHAN (in Cantonese): President, though I criticize the MPF, I do not oppose it. I only oppose putting MPF under the management of the private sector. President, he misunderstood what I mean.

DR FERNANDO CHEUNG (in Cantonese): President, with regard to the MPF issue, it is really a rare occurrence for me to hold the same stance as that of the Liberal Party.

In a debate held over 10 years ago, I opposed the MPF in my capacity as a scholar and a member of the Hong Kong Social Security Society. The reasons I held then were exactly reflected in today's situation — since we can now see that MPFs really cannot protect the most needy groups in society. As a matter of fact, the groups with the lowest incomes or today's most needy elderly persons absolutely cannot benefit from MPFs.

Today, in this motion debate, we discuss the exorbitant MPF management fees. I think we are not particularly outstanding in other aspects, but the level of our MPF management fees ranks number one in the world, which is a problem that even a Nobel Prize winner felt the need to mention.

If Members care to go over the data carefully, there is this website belonging to a Mr David WEBB who is nicknamed "Long Hair in the Stock Market". On his website, Mr WEBB released three articles analysing the various problems of MPF. In these articles, he illustrated with a table clearly indicating that, if the management fee of a MPF scheme is 2% and the return rate is 5%, then for every \$1,000 of investment, it will require the payment of \$111 in management fee within five years. In 40 years, the proportion of money to be deducted from the overall investment will amount to 55.4%.

This is not absolutely unbelievable. In fact, according to information released by official sources (that is, the MPFA), the level of management fees

has reached 2.06% now. But this 2.06% is in fact misleading because the figure has not included transaction costs, commissions and other management charges. Therefore, Mr David WEBB estimated that the actual level of management fees had already reached 2.5%. President, if we base our calculation on this level, how much money would have been eroded after 40 years? It will be 63.7%. That is, if the original investment is \$100, then \$63.7 will be eroded ultimately. Please think about this, we are just talking about the management fees, and we also assume that we shall have a return of 5%. If our return rate cannot reach 5%, the situation would even be worse. What kind of protection can such retirement protection offer us?

Our entire system is absolutely weird. It is a retirement protection scheme originally provided for public good and for the protection of the most needy people in society, but we handed it over to the private sector, allowing it to be fully integrated in the financial market. For such a system, you can find only very few, if any, similar examples in other parts of the world. At that time, when the Government strongly promoted the scheme, it said such examples did exist. Yes, there is really one, which is in the Third World — a country called Chile in South America. Why did Chile implement such a scheme? Of course, it was because Chile was controlled by the United States. In fact, the United States stock exchange has basically controlled the entire retirement fund market of Chile. Is the Chilean example a success or a failure? Very sorry, President, as of today, it is a total failure. But even if it is a failure, its management fees are still lower than those charged in Hong Kong. By and large, about 30% of the retirement funds will become the revenues of funds investment companies. We model our system on the Chilean system, but our management fees are even "higher" than theirs.

Besides, examples of passing retirement funds to the private sector for management are not totally non-existent in other parts of the world, but they are usually limited to voluntary schemes of individuals outside the universal retirement protection system. We model our system on the Chilean example, and according to the experience of that country, a large proportion of their retirement funds (over 50%) is controlled by three major management companies. However, in Hong Kong, over 80% of our MPF schemes are controlled by four major local trustees. Mr Bernard CHAN has also said frankly that the number of such companies will not increase. This is also a fact. At present, we actually have an oligopoly situation in the market. If such a situation is allowed to go on this way, what will happen? The local wage

earners shall be left with no choice, whereas the employees in Chile still have the right to change trustees twice a year. But all we shall be discussing later on is just a proposal of allowing employees to have the option of changing trustees once a year.

Regarding the administrative fees, if we compare ours to those charged in the United States, it is really pointless. The administrative fee of the public system is 0.01%. After several decades, the eroded investment will only be about 2%. When this figure is compared to ours of over 60% as mentioned earlier, there is absolutely no point in making any comparison. Therefore, in terms of cost and efficiency, does the private sector necessarily do better than the public sector? Very obviously, it is not so in this case. Even if we draw a comparison with private sector investments in other countries, such as the Vanguard Index Fund, which is known to many people, its average management fee is 0.25%. Regarding management fees in the passive categories, the average management fee is only 0.18%.

Today's situation is absurd. On the one hand, we tell wage earners that they should make their choices prudently and do not be misled. However, on the other hand, we have given them with no choice at all. In fact, the transparency in this regard is very low. By now, we do not know how much of the MPF investment of each individual wage earner has been eroded by management fees. But all such eroded money is our hard-earned money. If we do not introduce drastic reforms today, boost its transparency and pragmatically conduct studies on a universal retirement protection system, I am afraid the people will come to only one conclusion, that the MPF is just a trick used for ripping them off.

Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, the MPF System has been implemented for six and a half years. During the past few years, the MPFA has focused on launching extensive publicity and educational campaigns to promote the new system. Therefore, the MPF participation rate has reached 98% now. With the growing maturity of the System and the intensification of the market, employees have gained a heightened awareness of protecting their own interests. For this reason, the Government should make strengthening the protection of employees' MPF assets as its key area of work in the future. Apart from

stepping up enforcement and eliminating employers' offences of defaulting payment of contributions, the Government must tighten up the regulation of the fee levels of MPF schemes and enhance the transparency of fees charged, so as to advocate the lowering of fees charged by the funds.

As at March this year, the total assets value of MPF schemes in Hong Kong amounted to \$210 billion. In other words, each participating employee on average owns assets with a value of \$100 000. It is the prime task of both the Government and the MPFA to identify ways of preventing employees' assets from being eroded by MPF fees. The DAB had conducted a survey in mid-2003 on 10 major MPF companies, highlighting the existence of many problems such as the invention of numerous excuses for charging fees in their systems; inadequate disclosure; the lack of common basis for comparing the charging patterns among the various companies; and the adoption of certain practices which in effect are hiding certain charges, and so on. So, the MPFA promulgated the Code on Disclosure for MPF Investment Funds in 2004, and standardized the formats of the fee schedules which trustees must provide to employees who intend to participate in the respective schemes. However, this measure can only help employees to compare the fees charged by different funds when they are choosing constituent funds.

Regarding those employees who have already joined certain schemes, the information they definitely want to have is: How much fee has been charged annually from their own MPF accounts? But, to date, only very few MPF companies would provide details on this item of information in the annual benefit statement or through other channels. Such a situation is very unreasonable as it has overlooked the interests of employees. According to the Recommendation on Core Principles for Occupational Pensions Fund Regulation released by the Organization for Economic Co-operation and Development (OECD), the benefit statements of pension fund schemes such as MPF schemes should contain the dates and values of the contributions that have been credited to the accounts, the performance of the investments, the profits and/or losses as well as all the transaction (buying and selling) records of the relevant accounts. At present, what most of the MPF companies are doing cannot even reach the minimum level of the internationally recognized standards as stated above. With the ever growing size of the MPF assets, the situation has become really worrying. Therefore, the MPFA should expeditiously enforce the stringent Code on Disclosure for MPF Investment Funds in order to require MPF companies to provide periodic reports to employees on the fees deducted from their

contributions in each transaction, thereby enabling the wage earners to find out explicitly the whereabouts of their own assets.

During the early stage of implementing the MPF schemes, since the total assets value was relatively low, MPF companies had to charge the fees at a relatively higher ratio in order to pay for the operating expenses then. However, with the increase in the total assets value, the entire MPF investment management industry still keeps on charging high fees which will eventually erode the retirement funds of wage earners. According to past surveys conducted by the DAB, among the major MPF trustees in Hong Kong, half of them are charging management fees of over 2%, with the maximum amounting to 4.1%. Working on this fee proportion, 40% or even over 50% of wage earners' MPF contributions and benefits will be pocketed by MPF companies.

At present, the total assets value of MPFs amounts to over \$210 billion. Calculating at an average fee level of 2.06%, the entire MPF industry is reaping an annual revenue of \$4.4 billions. MPF is a kind of universal compulsory contributions, which is different from ordinary investment funds available in the market. Since the business is protected by government policies, the various kinds of operating risks it faces are relatively less. As such, the industry does have adequate conditions for lowering the fees. The DAB has put forward different proposals, including the establishment of a passbook system, allowing employees to choose their own trustees as well as the enactment of legislation by the Government to specify the fee levels according to the risks of different categories of funds and the complexity of the investments involved, thereby making MPF trustees lower the fees. Recently, the MPFA, including its newly appointed Chairman, has openly expressed their relevant viewpoints. Therefore, the DAB urges the Government to expeditiously implement these measures, so as to enhance the transparency of MPF fees. In the meantime, employees should be allowed to choose their own MPF companies. This will boost competition in the market and consequently market force will make the various fund management companies reduce their management fees. In addition, through implementing regulation by way of some other methods, the Government will then be able to protect wage earners' well-deserved benefits.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, then Ms Miriam LAU, you may now speak on the amendments. You may speak up to five minutes.

MS MIRIAM LAU (in Cantonese): Madam President, I am very glad that today's motion can arouse the concern of so many Members who have proposed many amendments and amendments to amendments.

With regard to the amendments proposed by Mr SIN Chung-kai and Mr CHAN Kam-lam, both of them have hoped that employees are allowed to choose their own trustees. Basically, the Liberal Party does not oppose this suggestion. However, the amendments of both Mr SIN and Mr CHAN are not explicit enough in expressing the ideas. Therefore, two colleagues of ours in the Liberal Party, Mr Andrew LEUNG and Mr Jeffrey LAM have proposed respective amendments to say that the practice of allowing employees to choose their own trustees only applies to the portion of their own contributions, whereas the arrangements for the portion contributed by employers will remain unchanged.

We believe such a practice will give more choices to employees, so that they can choose their own trustees and make changes for the portion of their accumulated contributions. We very much hope that such a practice can enhance competition, thereby reducing the high management fees charged by MPF trustees, and at the same time this will not expose the portion of the employers' contributions to higher risks. From the aspect of administrative arrangements, this will only increase the workload slightly, and I believe this is acceptable to employees. We think that this can strike a balance between the interests of employers and employees and bring about a win-win situation at the same time.

With regard to Mr WONG Kwok-hing's amendment, it mentions the need to study the establishment of a central employees management service system to handle centrally the contributions made by both employers and employees. This suggestion is different from the concept of a central MPF proposed in the past, and this amendment is just limited to the central collection of contributions from both employers and employees, then passing the contributions to MPF companies in the private sector specified by the employers or the employees for making investments. However, we think that since the present MPF System has been operating for more than six years, and the practice of making

contributions from employers to trustees has basically been operating well and smoothly, and it is simple, direct and convenient, I really cannot see any need for changing the current practice. On the contrary, if we introduce a so-called central collection and despatch platform to the simple employer-to-trustee mode of operation, such a practice is really a duplication of effort.

Regarding Mr WONG Kwok-hing's suggestion, apart from the fact that it will aggravate the complexity of the operation, he could have also overlooked the fact that the size of today's MPF is in fact rather colossal. Please note that, at present, the number of wage earners participating in MPF schemes amounts to 2.48 million persons, involving a total sum of over \$210 billion. It is by no means a small amount, which will keep growing every day. Therefore, if we have to centrally manage such large amounts of money and accounts, we will have to face complex programs such as those for managing the switching of investment plans, and so on, which will involve a rather substantial amount of administrative costs. We do not know how many super computers we have to purchase before we can handle all the workload involved. May I ask who will foot the bill? "Where do we get the money for it" is a major problem that we have to solve.

The focus of today's subject under discussion is how to lower the MPF management fees charged by trustees, and the hope that the rate of investment returns can be boosted. I cannot see how the establishment of a central management organization can help in these two aspects. We have moved this motion in the hope that the present mechanism can be improved and that competition can be suitably strengthened, so as to create room for downward adjustment of management fees and enhancement of investment returns of funds. But we have never intended to tear down the entire system and start everything anew, and introduce comprehensive changes to the fundamentals of the entire MPF System. These would affect the stability of the existing system — in fact, apart from the issues of management fees and investment returns, the existing system has been operating well. In fact, the existing system enjoys very good stability, which we do not want to endanger. Once such stability is undermined, it would be to the disadvantage of both employers and employees. Therefore, we cannot support Mr WONG Kwok-hing's amendment.

Madam President, I so submit.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, first of all, I must thank Members for tendering their valuable opinions on this motion topic. Actually, I think that if the mass media can report the debate tonight, the 2 million or so employees participating in Mandatory Provident Fund (MPF) schemes will surely benefit. After listening to the many opinions expressed by Members just now, I notice one very obvious point — it seems that all employees participating in MPF schemes do not have a good understanding of these schemes. I heard the survey statistics mentioned by Mr CHAN Kam-lam a moment ago. Actually, the money concerned all belongs to the 2 million or so employees, so they should be concerned about the money they can get upon retirement in the future. Therefore, speaking of the gain that tonight's debate can achieve, I hope that starting from tomorrow, the 2 million or so employees can pay greater attention to the investment of their MPF contributions and other related matters. I shall come back to this a moment later.

Actually, the Mandatory Provident Fund Schemes Authority (MPFA) has made many efforts in this respect. I myself have taken part in many promotional activities, in the hope that employees can get to know the fees involved and realize the importance of investment decisions. Between September 2005 and August 2006, the MPFA launched a series of promotional projects on MPF investment education, and I also took part in the activities in Sha Tin. Therefore, I can say that the MPFA has already done its utmost to promote the work concerned. But members of the public must also make an effort to understand the workings of MPF schemes because the money after all belongs to them and they should show more concern. I naturally hope that the MPFA can continue to do its best in respect of investment education and other related matters. I believe that the new Chairman, Mr Henry FAN, will certainly continue to make efforts in this respect.

Just now, two Members talked about the role of the Government. I must refute their arguments on behalf of the Government. Mr Frederick FUNG criticized the Government for showing inadequate commitment after the establishment of the MPF System. Mr LEUNG Yiu-chung said that the Government simply watched with folded arms. Members should remember that following the establishment of the MPF System in 2000, we already took steps to amend the legislation concerned on the advice of the MPFA Management Board. The proposals were all meant to improve the workings of the MPF System, and they were all passed by the Legislative Council. I can still remember that in 2002, when I first assumed office, I had to speak in the resumed Second Reading

debate of the relevant Bill. Frankly speaking, I was not quite so well-versed in the MPF System at that time because I had assumed office for just two weeks. But the amendments were still passed by the Legislative Council. In 2006, I also managed to secure the passage of some further amendments with the support of the Legislative Council. Today, I have once again moved the Second Reading of the relevant Bill on amending certain provisions relating to the MPFA.

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

Therefore, I totally disagree to any allegations that the Government has done nothing, has simply watched with folded arms and has shown inadequate commitment. It is a pity that both Mr Frederick FUNG and Mr LEUNG Yiu-chung are not here now — what I mean is that they are not present now, that is, they are away from the Chamber for the time being. If any misunderstanding has resulted from my remarks, I will be very sorry. Maybe, it is already 11 pm, so we are not quite so sober when speaking.

Many Members talked about the issue of fees just now. Actually, concerning this issue, when I replied to Miss TAM Heung-man's oral question two weeks ago, I already pointed out that much must depend on market forces. The Deputy President, Ms Miriam LAU, also remarked earlier on that our fees were higher than those in other countries. But as I mentioned two weeks ago, it is in fact very difficult to make a comparison. However, both the MPFA and I agree that measures must be adopted to promote competition. Mr Bernard CHAN made a very good point just now. According to him, at the very beginning, there were many trustees, but then, the number of trustees started to diminish. But since the total assets have now reached \$210 billion after a period of accumulation, he remarked, there may be more opportunities for participants. The reason is that with an expanding market, trustees not taking part in any MPF schemes in the past may be induced to enter the market. I also hope so. Another point is that since our threshold is not too high, some trustees may be lured by the expanding market to take part, and this will promote competition. We also discussed the idea of allowing employees to make their own decisions on how to use part of their MPF contributions. This will be of some help to fees. For this reason, we will take positive follow-up actions.

(THE PRESIDENT resumed the Chair)

When it comes to investment returns, I think Mr James TIEN is right in pointing out that high risks will yield high returns and low risks will yield low returns. This is actually a law. There is no such thing as "low risks, high returns". Members keep saying that the rate of returns is just 8%. We are actually talking about an average rate. I now have some information concerning the MPF statistics relating to a major bank. Once I cite some of these statistics, Members will realize that investments will carry risks. Investment is a matter that involves the level of risks which one can bear, and returns also depend on the good judgement of investment managers. But investment managers' judgement may not be good all the time, so returns may not be so good every year.

Let me now read aloud some statistics to Members. A major bank's Hong Kong funds with investments in stocks yielded a cumulative rate of returns at 79% from 1 December 2000 to 31 October 2006. For 2005, the rate was merely 6%. During the same period, the rate of returns for investments in Asian stocks was 76%. But in 2005, since certain Asian markets performed better than the Hong Kong market, the investments in Asian stocks in this particular year yielded a return rate of 24%, while that for Hong Kong stocks was just 6%. Investments in North American stocks yielded a return rate of 18.7% during the same period, and for 2005, the rate was just slightly higher than 3%. Investments in guaranteed funds, mostly bonds and cash, yielded an 7.6% rate of return during the same period, and the rate for 2005 was minus 0.5%.

All these statistics can show that the returns for certain types of funds purchased during a particular period of time will depend on the prevailing market conditions. However, I very much agree with Mr Bernard CHAN that when it comes to investments, we should not just look at a year or several months. Rather, we should look at the long run. Since the MPF system is a long-term one, we should not look at investment returns in this way. The statistics I cited just now covered six years, which was in fact quite a long time. But as Members can see, investment returns must depend on the choices of individual investors and the degree of risks they can bear. Therefore, one simply cannot conclude that the rate of returns is poor. This is not necessarily the case, and much has to depend on market conditions. Besides, some investment managers may not be able to perform similarly well every year, so we must give them some allowance. Our objective is to set down some basic regulations for investment returns, so as to ensure that capitals are always spent on quality

investment tools. The MPFA will not allow anyone to invest in high-risk areas. This will also affect the rate of returns. Therefore, I hope Members can understand that investment returns are also affected by all these factors.

Members also know that if investor education and information disclosure can be made more satisfactory, there will be better investment returns for employees participating in MPF schemes. If these employees know how they should make investments, there may be higher returns for them. For this reason, in 2004, the MPFA issued a code on disclosure for MPF investment funds, laying down requirements on a standardized fee schedule, annual benefit statements and fund fact sheets, so that fees and investment performance can be clearly listed.

As I mentioned earlier on in this meeting today, the first-stage platform of comparison will be launched in July. This platform will enable the comparison of information concerning the highest, average and lowest costs of different types of funds. The second-stage platform, to be launched following the passage of the Bill proposed by me today, will compare the detailed fees of every fund. Therefore, I hope Members can realize that the Government and the MPFA have all along been making joint efforts.

Just now, we also discussed the idea of enlarging the option of employees, of allowing them to select a trustee once every year. I hope Members can understand our concern that employers must not be made to bear excessive administrative fees. I agree with Mr James TIEN that small companies with just a dozen or so employees should not be made to bear excessive administrative fees. His view is well justified. We will of course consider the whole idea in detail and conduct full consultation. I have been listening to Members' views for several hours tonight. I think most Members support our scheme. Therefore, the MPFA will certainly pursue the matter actively.

Finally, I wish to point out that from the perspective of the Government, the MPF System is very important because it concerns the interests of some 2 million employees, 200 000 or so self-employed persons and some 200 000 employers. Therefore, we will definitely do our utmost to perfect the system and listen to all views. Several Members present now are Directors of the MPFA Managing Board. They will listen to Members' views and take positive actions to implement any valuable advice, so as to protect the interest of the 2 million or so employees under the MPF System. Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mr SIN Chung-kai to move his amendment to the motion.

MR SIN CHUNG-KAI (in Cantonese): President, I move that Ms Miriam LAU's motion be amended.

Mr SIN Chung-kai moved the following amendment: (Translation)

"To add "current" after "in view of the"; to add ", including changing the practice of employers selecting the MPF trustees to allowing employees to choose their own MPF trustees, and adding new provisions to the Code on Disclosure for MPF Investment Funds to require MPF trustees to further disclose the levels of fees and charges for constituent funds of a similar nature, so as" after "create favourable conditions"; and to add "and facilitate comparison by employees participating in the MPF schemes" after "competition in the MPF management market"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr SIN Chung-kai to Ms Miriam LAU's motion be passed.

PRESIDENT (in Cantonese): I now call upon Mr Andrew LEUNG to move his amendment to Mr SIN Chung-kai's amendment.

MR ANDREW LEUNG (in Cantonese): President, I move that Mr SIN Chung-kai's amendment be amended.

Mr Andrew LEUNG moved the following amendment to Mr SIN Chung-kai's amendment: (Translation)

"To add "for their own contributions" after "choose their own MPF trustees"; to add "various" after "the levels of fees and charges for"; and to delete "of a similar nature" after "constituent funds"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Andrew LEUNG to Mr SIN Chung-kai's amendment, 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 amendment passed.

PRESIDENT (in Cantonese): I now put the question to you and that is: That Mr SIN Chung-kai's amendment, as amended by Mr Andrew LEUNG, to Ms Miriam LAU'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.

(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 amendment passed.

PRESIDENT (in Cantonese): Members have been informed that Mr CHAN Kam-lam will withdraw his amendment if Mr SIN Chung-kai's amendment is passed. As this is the case now, Mr CHAN Kam-lam has therefore withdrawn his amendment. Mr Jeffrey LAM therefore may not move his amendment to Mr CHAN Kam-lam's amendment.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, as the amendment by Mr SIN Chung-kai as amended by Mr Andrew LEUNG has been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which has been circularized to Members. When you move your revised amendment, you have up to three minutes to explain the revised terms in your amendment, but you may not repeat what you have already covered in your earlier speech. You may now move your revised amendment.

MR WONG KWOK-HING (in Cantonese): President, I move that Ms Miriam LAU's motion as amended by Mr SIN Chung-kai and Mr Andrew LEUNG, be further amended by my revised amendment.

President, my amendment in fact consists of two points: First, the establishment of a central employees management service system to handle centrally the contributions by both employers and employees. On this point, I just propose that we should study the issue. I also note that Ms Miriam LAU of the Liberal Party said earlier that she disagreed with this proposal. But I would like to ask the Liberal Party to consider this: The request I am making is just to ask the Government to study the proposal. Do they mean that they would not allow even the chance to study the proposal? I hope they can support my view.

Besides, I also mention another point in my amendment: "if the situation persistently shows no improvement, the authorities should enact legislation to regulate the management and administrative fees charged by the trustee companies". In this regard, as I have said very explicitly in the condition, the authorities would take such actions only when the situation persistently shows no improvement. Therefore, I also hope that the Democratic Party can support this proposal of mine, because I said that actions would be taken only if the situation persistently shows no improvement. I so submit and hope Members can support me. Thank you, President.

Mr WONG Kwok-hing moved the following further amendment to Ms Miriam LAU's motion as amended by Mr SIN Chung-kai and Mr Andrew LEUNG: (Translation)

"To add "; in addition, the Government should study the establishment of a central employees management service system to handle centrally the contributions by both employers and employees" after "employees participating in the MPF schemes"; and to add "; if the situation persistently shows no improvement, the authorities should enact legislation to regulate the management and administrative fees charged by the trustee companies" after "investment performance"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr WONG Kwok-hing's amendment, to Ms Miriam LAU's motion as amended by Mr SIN Chung-kai and Mr Andrew 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.

(Members raised their hands)

Mr WONG Kwok-hing rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing 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 LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Mr KWONG Chi-kin voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG and Prof Patrick LAU voted against the amendment.

Mr Bernard CHAN, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Timothy FOK, Dr Fernando CHEUNG, Mr WONG Ting-kwong and Miss TAM Heung-man abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr TAM Yiu-chung, Mr Frederick FUNG and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG and Mr Ronny TONG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, four were in favour of the amendment, 11

against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, five were in favour of the amendment, two against it and 11 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.

PRESIDENT (in Cantonese): Ms Miriam LAU, you may now reply and you have one minute 28 seconds.

MS MIRIAM LAU (in Cantonese): Madam President, our debate has been going on for more than three hours today, and it is now nearly the time for Cinderella to go home. I am grateful to the 20-odd colleagues who have spoken on this motion. This shows that colleagues are all very concerned about the MPF issue. The debate has been going on for several hours, and it is most invaluable for it to enable us to reach a common agreement that there are really some problems with the MPF System, and that the major problem lies in the lack of competition, which leads to high management fees and low investment returns, thus eroding the contributions of both employers and employees.

In fact, the MPF issue is the common concern of both employers and employees. Therefore, Members, be they inclined to support employers or employees, are all enthusiastic today in participating in this debate and putting forward their opinions. In fact, we have reached some sort of a consensus, that is, there is inadequate competition; as such, we need to step up competition. And perhaps it is only the method of doing so that may require some fine-tuning because different colleagues may have adopted different perspectives in expressing their viewpoints. For the sake of narrowing the difference, it appears that the mainstream opinion is for allowing employees to participate in the process of choosing their own trustees. But the new measure would only start applying to the portion of employees' contribution, whereas other aspects will be followed up in future. Besides, the transparency should also be enhanced. This is very important. In other words, it seems that both employers and employees do not have adequate knowledge of MPF. We need to make more effort in this regard.

I believe these points of consensus can help both the MPFA and the Government to make improvement to MPF.

PRESIDENT (in Cantonese): Your speaking time is up.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Miriam LAU, as amended by Mr SIN Chung-kai and Mr Andrew LEUNG, 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, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 4 July 2007.

Adjourned accordingly at two minutes to Twelve o'clock at midnight.

COPYRIGHT (AMENDMENT) BILL 2006

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

<u>Clause</u>	<u>Amendment Proposed</u>
2(2)	By deleting "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development".
2(2)	By deleting paragraph (a) and substituting - "(a) section 4(1) (insofar as it relates to the new section 25(1)(c), (d), (e) and (f)), (2) and (4);".
New	By adding in Part 2 - "2A. Long title amended The long title to the Copyright Ordinance (Cap. 528) is amended by repealing everything after "An Ordinance to" and substituting "make provisions in respect of copyright and related rights and for connected purposes.

**2B. Duration of copyright in literary,
dramatic, musical or artistic
works**

Section 17(5)(b)(i) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

3 By deleting "of the Copyright Ordinance (Cap. 528)".

4 By renumbering the clause as clause 4(1).

4 By adding -

"(2) Section 25(3) is amended by repealing "The" and substituting "Subject to subsection (3A), the".

(3) Section 25(3)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(4) Section 25 is amended by adding -

"(3A) The rental of copies of a work referred to in subsection (1)(e) or (f) includes the making available of copies of the work for on-the-spot reference use subject to direct or indirect payment.".

5 By adding -

"(2A) Section 31(1)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

7 By deleting subclause (1) and substituting -

"(1) Section 35(3) is amended by repealing "Except as provided in section 35A," and substituting "Except as otherwise provided in section 35A or 35B,"."

7(2) By deleting "9 months" and substituting "15 months".

7 By adding -

"(2A) Section 35 is amended by adding -

"(6A) Where, in any proceedings, a question arises as to whether a copy of a work that was lawfully made in the country, territory or area where it was made is an infringing copy by virtue only of subsection (3), and it is shown -

(a) in the case of a copy of a work that is stored in an optical disc, that the optical disc is not marked with a manufacturer's code as required under section 15 of the Prevention of Copyright Piracy Ordinance (Cap. 544);

(b) that a label or mark on the copy, the article in which the copy is embodied or the packaging or container in which the copy is packaged or contained indicates that

the copy was made in a country,
territory or area outside Hong Kong;
or

- (c) that a label or mark on the copy,
the article in which the copy is
embodied or the packaging or
container in which the copy is
packaged or contained indicates that
distribution, sale or supply of the
copy is prohibited in Hong Kong or
restricted to countries, territories
or areas outside Hong Kong,

then, unless there is evidence to the contrary, the
copy shall be presumed to have been imported into
Hong Kong.

(6B) In subsection (6A) (a) -

"manufacturer's code" (製造者代碼) has the meaning
assigned to it by section 2(1) of the
Prevention of Copyright Piracy Ordinance (Cap.
544);

"marked" (標上) has the meaning assigned to it by
section 15(3) of the Prevention of Copyright
Piracy Ordinance (Cap. 544);

"optical disc" (光碟) has the meaning assigned to it by section 2(1) of the Prevention of Copyright Piracy Ordinance (Cap. 544).".

8 By deleting the proposed section 35B(1) and substituting -

"(1) A copy of a work to which this subsection applies is not -

- (a) in relation to the person who imports it into Hong Kong, an infringing copy for the purposes of section 35(3) if -
 - (i) it was lawfully made in the country, territory or area where it was made; and
 - (ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or
- (b) in relation to the person who possesses it, an infringing copy for the purposes of section 35(3) if -
 - (i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business."

8 By deleting the proposed section 35B(5) and substituting -

"(5) Where a copy of a work is not an infringing copy by virtue of subsection (1) but is subsequently dealt in for the purpose of or in the course of any trade or business -

- (a) if that dealing takes place within the period of 15 months referred to in section 35(4)(b), it is, for the purposes of sections 118 to 133 (criminal provisions), to be treated, in relation to that dealing and the person who deals in it, as an infringing copy; and
- (b) irrespective of the time at which that dealing takes place, it is, for the purposes of any provision of this Ordinance except sections 118 to 133, to be treated, in relation to that dealing and the person who deals in it, as an infringing copy."

- 11 In the proposed section 40B(1), by adding "by or on behalf of the person" before "for his personal use".
- 11 In the proposed section 40B(3), by deleting "for the person" and substituting "by or on behalf of the person".
- 11 In the proposed section 40B(4), by deleting "for a person" and substituting "on behalf of a person".
- 11 In the proposed section 40C(5), by deleting "name and address" and substituting "identity and contact details".
- 11 In the proposed section 40D(5), by deleting "name and address" and substituting "identity and contact details".
- 12 In the proposed section 41A(1), by deleting "by a teacher or pupil" and substituting "by or on behalf of a teacher or by a pupil".
- 12 In the proposed section 41A, by adding -
- "(4A) Where any dealing with a work involves the making available of copies of the work through a wire or wireless network wholly or partly controlled by an educational establishment -

(a) if the educational establishment fails

to -

- (i) adopt technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or
- (ii) ensure that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

the dealing is not fair dealing under subsection (1); and

- (b) if the educational establishment -
 - (i) adopts technological measures to restrict access to the copies of the work through the network so that the copies of the work are made available only to persons who need to use the copies of the work for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and
 - (ii) ensures that the copies of the work are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).

(4B) Without affecting the generality of section 37(5), where any dealing with a work involves the making of reprographic copies, the fact that the making of the copies does not fall within section 45 does not mean that it is not covered by this section, and subsection (2) applies in determining whether the dealing is fair dealing under subsection (1).".

13 By deleting subclause (1) and substituting -

"(1) Section 43(1) is amended by repealing "an audience consisting of teachers and pupils at an educational establishment and other persons" and substituting "an audience consisting wholly or mainly of teachers and pupils at an educational establishment, parents or guardians of pupils at the establishment, and other persons".".

13 By deleting subclause (3) and substituting -

"(3) Section 43(3) is repealed.".

14 By deleting the clause.

15 By deleting subclause (3).

- 16 In the English text, by deleting the heading and substituting
"Sections added".
- 16 In the English text, by deleting "is added" and substituting
"are added".
- 16 In the proposed section 54A(1), by deleting "the Legislative
Council,".
- 16 By adding after the proposed section 54A -
"54B. Legislative Council
- (1) Copyright is not infringed by -
- (a) anything done for the purposes of the
proceedings of the Legislative Council;
or
- (b) anything done by or on behalf of -
- (i) the members of the Legislative
Council; or
- (ii) The Legislative Council
Commission,
- for the purposes of the exercise and
discharge by the Legislative Council of
its powers and functions.

(2) Copyright is not infringed by anything done for the purposes of reporting the proceedings of the Legislative Council; but this is not to be construed as authorizing the copying of a work which is itself a published report of the proceedings."

New By adding -

"16A. Legislative Council and judicial proceedings

(1) Section 54 is amended by repealing the heading and substituting "**Judicial proceedings**".

(2) Section 54(1) is amended by repealing "the proceedings of the Legislative Council or".

(3) Section 54(2) is amended, in the Chinese text, by repealing "立法會程序或".

16B. Use of typeface in ordinary course of printing

Section 62(3) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

17 By renumbering the clause as clause 17(1).

17 By adding -

"(2) Section 72(2) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".".

18 In the proposed section 81A(1), by adding "primarily" after "inside a vehicle".

18 By deleting the proposed section 81A(2) and substituting -

"(2) In subsection (1), "vehicle" (車輛) means any vehicle constructed or adapted for use on roads.".

New By adding -

"18A. Right to be identified as author or director

(1) Section 89(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 89(4)(a) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(3) Section 89(7)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(4) Section 89(8) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

18B. Requirement that right be asserted

(1) Section 90 is amended, in the heading, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 90(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(3) Section 90(2) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(4) Section 90(2)(a) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(5) Section 90(3) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(6) Section 90(3) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(7) Section 90(3)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

(8) Section 90(3)(b) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(9) Section 90(4) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(10) Section 90(4)(a) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(11) Section 90(4)(b) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(12) Section 90(4)(c) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(13) Section 90(4)(d) is amended, in the Chinese text, by repealing "體現" where it twice appears and substituting "宣示".

(14) Section 90(5) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

18C. Exceptions to right

(1) Section 91(4) is amended by adding -
"(ca) section 54B (Legislative Council);".

(2) Section 91(4)(d) is amended by repealing "Legislative Council and".

18D. Right to object to derogatory treatment of work

Section 92(4)(a) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

19 By adding -

"(2A) Section 95(1)(c) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

20 By adding before subclause (1) -

"(1A) Section 96(2)(b) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

20 By adding -

"(3) Section 96(7) is amended, in the Chinese text, by repealing "展覽" and substituting "陳列".

New By adding -

"20A. Application of provisions to joint works

(1) Section 99(1) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 99(2) is amended, in the Chinese text, by repealing "達成" and substituting "體現".

20B. Transmission of moral rights on death

(1) Section 106(3)(a) is amended, in the Chinese text, by repealing "體現" and substituting "宣示".

(2) Section 106(3)(b) is amended, in the Chinese text, by repealing "達成" and substituting "體現".

- 22 By adding before subclause (1) -
- "(1A) Section 118 is amended, in the heading, by repealing "**Criminal liability for**" and substituting "**Offences in relation to**".".
- 22(1) In the proposed section 118(1)(f), in the Chinese text, by deleting "目的是" and substituting "以期".
- 22(2) In the proposed section 118(1B)(a), in the Chinese text, by deleting "以令" and substituting "以期令".
- 22(3) In the proposed section 118(2A), by deleting "Without prejudice to subsection (1), a" and substituting "A".
- 22(3) In the proposed section 118(2A), in the Chinese text, by deleting "以令" and substituting "以期令".
- 22(3) By deleting the proposed section 118(2D)(a) and (b) and substituting -
- "(a) the computer program incorporates the whole or any part of a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the

work is made available; or

- (b) the computer program is incorporated in a work that is not a computer program itself, and the computer program is technically required for the viewing or listening of the work by a member of the public to whom a copy of the work is made available."

22(3) By adding after the proposed section 118(2D) -

"(2DA) Subsection (2A) does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of heritage conservation if -

- (a) the infringing copy was donated or given to the Hong Kong Film Archive by the public; or
- (b) the infringing copy was made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in paragraph (a) against loss, deterioration or damage.

(2DB) Subsection (2A) does not apply to the possession of an infringing copy of a movie, television drama, musical sound recording or musical visual recording by the Hong Kong Film Archive for the purpose of doing any act in relation to the infringing copy

(other than for the purpose referred to in subsection (2DA)) if -

- (a) the infringing copy was -
 - (i) an infringing copy donated or given to the Hong Kong Film Archive by the public; or
 - (ii) an infringing copy made by the Hong Kong Film Archive to preserve or replace the infringing copy referred to in subparagraph (i) against loss, deterioration or damage;
- (b) it is not possible by reasonable enquiry to ascertain the identity and contact details of the copyright owner of the work in question; and
- (c) a copy (other than an infringing copy) of the work in question cannot be obtained on reasonable commercial terms."

22(3) By deleting the proposed section 118(2E)(a) and substituting -

- "(a) the person who possesses an infringing copy does so for the purpose of providing legal service in relation to the infringing copy, and -

- (i) the person is enrolled on the roll of solicitors or the roll of barristers kept under the Legal Practitioners Ordinance (Cap. 159); or
 - (ii) the person has been admitted as a legal practitioner in a jurisdiction other than Hong Kong;
- (aa) the person who possesses an infringing copy is serving a pupillage under the Barristers (Qualification for Admission and Pupillage) Rules (Cap. 159 sub. leg. AC) and he possesses the infringing copy for the purpose of assisting the barrister with whom he serves the pupillage in providing legal service in relation to the infringing copy;".

22(4) In the proposed section 118(2F), by deleting "he proves" and substituting "there is evidence showing".

22(4) By deleting the proposed section 118(2G) and (2H) and substituting -

"(2G) A defendant charged with an offence under subsection (2A) by virtue of subsection (2F) is taken not to have done the act in question if -

- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (2H) For the purposes of subsection (2G) (a) -
- (a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that -
 - (i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership; or
 - (ii) the body corporate or partnership concerned has incurred expenditure for the acquisition of a sufficient

number of copies of the
copyright work to which the
proceedings relate, which are
not infringing copies, for the
use of the body corporate or
partnership;

(b) subject to paragraph (a), in determining
whether sufficient evidence is adduced,
the court may have regard to, including
but not limited to, the following -

(i) whether the defendant has
introduced policies or
practices against the use of
infringing copies of copyright
works by the body corporate or
partnership;

(ii) whether the defendant has taken
action to prevent the use of
infringing copies of copyright
works by the body corporate or
partnership."

22 By adding -

"(8A) Section 118(6) is amended by repealing "not
being excluded under section 35(4)" and substituting
"not being excluded under section 35(4) and which was

lawfully made in the country, territory or area where it was made".

24 In the proposed section 119B, in the heading, by deleting "**of making for distribution or distributing**" and substituting "**in relation to making for distribution or distributing on a regular or frequent basis**".

24 By deleting the proposed section 119B(1) and substituting -

"(1) A person commits an offence if he does any of the following acts on a regular or frequent basis for the purpose of or in the course of any trade or business -

- (a) without the licence of the copyright owner of a copyright work described in subsection (2), makes an infringing copy of the work for distribution, resulting in a financial loss to the copyright owner; or
- (b) without the licence of the copyright owner of a copyright work described in subsection (2), distributes an infringing copy of the work, resulting in a financial loss to the copyright owner."

- 24 In the proposed section 119B(2), by deleting "Subsection (1) applies to" and substituting "The copyright work referred to in subsection (1) (a) and (b) is".
- 24 By deleting the proposed section 119B(3) and substituting -
- "(3) Subsection (1) does not apply in circumstances where -
- (a) the making or distribution of the infringing copies of one or more than one copyright work referred to in subsection (1) does not exceed the extent specified in the regulations made under subsection (14); or
- (b) the infringing copies of one or more than one copyright work referred to in subsection (1) are made or distributed in the manner specified in the regulations made under subsection (16)."
- 24 In the proposed section 119B, by adding -
- "(5A) Subsection (1) does not apply if the infringing copy -

- (a) forms part of the special collection of a library or archive owned by the Government, or a library or archive designated under subsection (5E) (a); and
- (b) is distributed solely -
 - (i) for on-the-spot reference use in, or during an activity organized by, a library or archive referred to in paragraph (a); or
 - (ii) for loan to other libraries or archives for the purpose of exhibition or research.

(5B) Subsection (1) does not apply to the making or distribution by a library or archive referred to in subsection (5A) (a) of a single copy of any item forming the special collection for the purpose of preserving or replacing the item against loss, deterioration or damage, but the copy may only be distributed for the use referred to in subsection (5A) (b).

(5C) In subsections (5A) and (5B), "special collection" (特別收藏品) -

- (a) in the case of a library or archive owned by the Government, means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the Director of Leisure and Cultural Services, of cultural, historical or heritage importance or value;
- (b) in the case of a library or archive designated under subsection (5E) (a), means a collection consisting primarily of works or articles, or copies of works or articles, donated or given by the public that are, in the opinion of the head or controlling body (by whatever name called) of the library or archive, of cultural, historical or heritage importance or value.

(5D) For the purposes of the exception under subsections (5A) and (5B), an archive owned by the Government includes a museum owned by the Government.

(5E) The Secretary for Commerce and Economic Development may, having regard to the advice of the Director of Leisure and Cultural Services -

- (a) by notice published in the Gazette designate for the purposes of subsection (5A) (a) any library or archive that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); and
- (b) by regulations prescribe the conditions that a library or archive designated under paragraph (a) must comply in order to be eligible for the exemption provided by subsections (5A) and (5B)."

24 In the proposed section 119B(6), by deleting "he proves" and substituting "there is evidence showing".

24 By deleting the proposed section 119B(7) and (8) and substituting -

"(7) A defendant charged with an offence under subsection (1) by virtue of subsection (6) is taken not to have done the act in question if -

- (a) sufficient evidence is adduced to raise an issue that he did not authorize the act to be done; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(8) For the purposes of subsection (7) (a) -

(a) the defendant shall be taken to have adduced sufficient evidence if the court is satisfied that -

(i) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the resources, for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership;

(ii) the defendant has caused the body corporate or partnership concerned to set aside financial resources, and has directed the use of the

resources, for the acquisition of a sufficient number of copies of the copyright work to which the proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;

(iii) the body corporate or partnership concerned has incurred expenditure for the acquisition of appropriate licences, in accordance with the needs of the body corporate or partnership, to make or distribute, or to make and distribute, copies of the copyright work to which the proceedings relate for the use of the body corporate or partnership; or

(iv) the body corporate or partnership concerned has incurred expenditure for the acquisition of a sufficient number of copies of the copyright work to which the

proceedings relate, which are not infringing copies, for the use of the body corporate or partnership;

(b) subject to paragraph (a), in determining whether sufficient evidence is adduced, the court may have regard to, including but not limited to, the following -

(i) whether the defendant has introduced policies or practices against the making and distribution of infringing copies of copyright works by the body corporate or partnership;

(ii) whether the defendant has taken action to prevent the making or distribution of infringing copies of copyright works by the body corporate or partnership.".

24 By deleting the proposed section 119B(9) (b) and (c) and substituting -

"(b) he has made reasonable efforts but failed to obtain commercially available copies of the copyright work in question and the copyright owner in question has refused to grant him a licence on reasonable commercial terms;

(c) he did not know and had no reason to believe that the copies made or distributed are infringing copies; or

(d) he cannot, after making reasonable enquiries, ascertain the identity and contact details of the copyright owner in question."

24 By deleting the proposed section 119B(14) and substituting -

"(14) For the purposes of subsection (3) (a), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the making or distribution of the infringing copies of the copyright work or works does not exceed the extent specified in the regulations."

24 In the proposed section 119B, by adding -

"(15) The Secretary for Commerce and Economic Development may, in the regulations made under subsection (14), specify the extent referred to in that subsection by reference to -

- (a) the number of infringing copies made or distributed;
- (b) the value of those infringing copies;
and
- (c) any other factors that he may consider relevant,

and provide for a method or methods for determining the number of those infringing copies, and a method or methods for determining the value of those infringing copies, having regard to the retail value of the related books, magazines, periodicals or newspaper, and any other factors that he may consider relevant.

(16) For the purposes of subsection (3)(b), the Secretary for Commerce and Economic Development may, in relation to one or more than one copyright work referred to in subsection (1), make regulations to prescribe that subsection (1) does not apply in circumstances where the infringing copies of the copyright work or works are made or distributed in the manner specified in the regulations, after having regard to -

- (a) the availability of any licensing scheme that covers the making or distribution of copies of the copyright work or works in the specified manner; and
- (b) any other factors that he may consider relevant."

27 By deleting subclause (1) and substituting -

"(1) Section 121(1) is amended by repealing "An affidavit which purports to have been made by or on behalf of the owner of a copyright work" and substituting "For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work"."

27 By adding -

"(2A) Section 121(1)(c) is amended by repealing "owner of the work" and substituting "copyright owner"."

27 By deleting subclause (3) and substituting -

"(3) Section 121(2) is amended by repealing "Without prejudice to subsection (1), an affidavit which purports to have been made by or on behalf of the owner of a copyright work" and substituting "For the purpose of facilitating the proof of subsistence and ownership of copyright, and without prejudice to subsection (1) and the operation of sections 11 to 16 (authorship and ownership of copyright) and sections 17 to 21 (duration of copyright), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work".".

27 By adding -

"(3A) Section 121(2)(a)(iii) is amended by repealing "owner of the work" and substituting "copyright owner".".

27(4) By adding before the proposed section 121(2A) -

"(2AA) For the purposes of facilitating the establishment of the matter referred to in section 35(3)(b), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

- (a) states the name of the copyright owner;
- (b) states that a copy of the work exhibited to the affidavit is a true copy of the work;
- (c) states -
 - (i) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by the copyright owner; or
 - (ii) that the copy of the work exhibited to the affidavit was made in a place outside Hong Kong by a person who has the licence of the copyright owner to make copies of the work in that place, but does not have the licence of the copyright owner to make copies of the work in Hong Kong; and
- (d) states the name and address of the person (if any) referred to in paragraph (c) (ii),

shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance."

27(4) By deleting the proposed section 121(2A) and (2B) and substituting -

"(2A) For the purposes of any proceedings instituted under section 118(1), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

(a) states the name of the copyright owner;

and

(b) states that the person named in the

affidavit does not have the licence of

the copyright owner to do an act referred

to in section 118(1)(a), (b), (c), (d),

(e), (f) or (g) in respect of the work,

shall, subject to the conditions contained in subsection (4), be admitted without further proof in those proceedings.

(2B) For the purposes of any proceedings instituted under section 118(2A), an affidavit which purports to have been made by or on behalf of the copyright owner of a copyright work and which -

(a) states the name of the copyright owner;

and

(b) states that the person named in the

affidavit does not have the licence of

the copyright owner to do an act referred

to in section 118(2A) in respect of the
work,

shall, subject to the conditions contained in subsection
(4), be admitted without further proof in those
proceedings."

27(5) By deleting the proposed section 121(2C) and substituting -

"(2C) For the purposes of any proceedings
instituted under section 119B(1), an affidavit which
purports to have been made by or on behalf of the
copyright owner of a copyright work and which -

(a) states the name of the copyright owner;
and

(b) states that the person named in the
affidavit does not have the licence of
the copyright owner to do an act referred
to in section 119B(1) in respect of the
work,

shall, subject to the conditions contained in subsection
(4), be admitted without further proof in those
proceedings."

27(6) By adding "(2AA)," after "(2),".

27(7) By adding "(2AA)," after "(2),".

27(8) By adding "(2AA)," after "(2),".

27 By adding -

"(8A) Section 121(8)(b) is repealed and the following substituted -

"(b) the court may of its own motion or, if the defendant who has served a notice under subsection (5) in relation to an affidavit satisfies the court -

- (i) that the ownership or subsistence of the copyright in a work is, insofar as that matter is stated in the affidavit, genuinely in issue;
- (ii) that whether a person has the licence of the copyright owner of a copyright work to do a particular act is, insofar as that matter is stated in the affidavit, genuinely in issue; or
- (iii) where the affidavit is made under subsection (2AA), that any matter stated in the affidavit, other than those referred to in subparagraphs (i) and (ii), is genuinely in issue,

either before or during the hearing, require the deponent to the affidavit to attend before the court and give evidence."."

27(9) By adding "(2AA)," after "(2),".

31 By deleting the clause and substituting -

**"31. Licensing schemes to which sections
155 to 160 apply**

Section 154(b) is amended by repealing "a computer program or sound recording" and substituting "a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)".

32 By deleting the clause and substituting -

**"32. Licences to which sections
162 to 166 apply**

Section 161(b) is amended by repealing "a computer program or sound recording" and substituting "a work referred to in section 25(1)(a), (b), (c), (d), (e) or (f)".

34 By renumbering the clause as clause 34(2).

34 By adding -

"(1) Section 187 is amended, in the heading, by repealing **"parallel import"** and substituting **"parallel-imported" copies of works**".

New By adding -

"34A. Folklore, etc.: anonymous unpublished works

Section 189 is amended, in the heading, in the Chinese text, by repealing **"民間傳說"** and substituting **"民間文學藝術"**.

34B. Meaning of "publication" and "commercial publication"

Section 196(4) (b) (i) is amended, in the Chinese text, by repealing **"展覽"** and substituting **"陳列"**.

34C. Requirement of signature: application in relation to body corporate

(1) Section 197(1) is amended, in the Chinese text, by repealing **"展覽"** and substituting **"陳列"**.

(2) Section 197(1) is amended, in the Chinese text, by repealing **"體現"** and substituting **"宣示"**.

(3) Section 197(2) is amended, in the Chinese text, by repealing **"體現"** and substituting **"宣示"**.

- 35(1) By deleting the proposed definition of "business" and substituting -
- ""business" (業務) includes -
- (a) a trade or profession; and
- (b) business conducted otherwise than for profit;".
- 35(3) In the proposed definition of "specified course of study", in paragraph (a), by deleting "the Curriculum Development Council" and substituting "a body or authority specified in Schedule 1A".
- 35 By adding -
- "(5) Section 198(3) is repealed and the following substituted -
- "(3) In this Part, "lawfully made" (合法地製作), in relation to a copy of a work made in a country, territory or area -
- (a) means that the copy was made by -
- (i) a person who is entitled to the copyright in the work in the country, territory or area, as the case may be; or

(ii) a person who is licensed by the person referred to in subparagraph (i) to make the copy in the country, territory or area, as the case may be; but

(b) does not include a copy that was made in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired."

(6) Section 198 is amended by adding -

"(4) The Secretary for Commerce and Economic Development may, by notice published in the Gazette, amend Schedule 1A."."

37 By deleting subclause (2) and substituting -

"(2) Section 200(2) is amended, in the definition of "performance", by adding -

"(ca) a performance of an artistic work;

(cb) an expression of folklore; or"."

44 By adding -

"(3) Section 229(8) is repealed and the following substituted -

"(8) In subsection (5)(a), "lawfully made" (合法地製作), in relation to a fixation of a performance made in a country, territory or area -

(a) means that the fixation was made by -

- (i) the performer;
- (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or
- (iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but

(b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired."."

45 By deleting the proposed section 229A(1) and substituting -

"(1) A fixation of a performance to which this subsection applies is not -

(a) in relation to the person who imports it into Hong Kong, an infringing fixation for the purposes of section 229(4) if -

(i) it was lawfully made in the country, territory or area where it was made; and

(ii) it is not imported with a view to its being dealt in by any person for the purpose of or in the course of any trade or business; or

(b) in relation to the person who possesses it, an infringing fixation for the purposes of section 229(4) if -

- (i) it was lawfully made in the country, territory or area where it was made; and
- (ii) it is not possessed with a view to its being dealt in by any person for the purpose of or in the course of any trade or business."

45 By deleting the proposed section 229A(5) and (6) and substituting -

"(5) Where a fixation of a performance which is not an infringing fixation by virtue of subsection (1) is subsequently dealt in for the purpose of or in the course of any trade or business, it is to be treated, in relation to that dealing and the person who deals in it, as an infringing fixation.

(6) In this section, "lawfully made" (合法地製作), in relation to a fixation of a performance made in a country, territory or area -

- (a) means that the fixation was made by -
 - (i) the performer;
 - (ii) a person having fixation rights in relation to the performance in the country, territory or area, as the case may be; or

- (iii) a person having the consent of the performer or the person referred to in subparagraph (ii) to make the fixation in the country, territory or area, as the case may be; but
- (b) does not include a fixation that was made in a country, territory or area where there is no law protecting rights in performances in the performance or where the rights in performances in the performance has expired."

New By adding -

"46A. Expressions having same meaning as in copyright provisions

(1) Section 238(1) is amended by adding -

"artistic work;"

(2) Section 238(1) is amended, in the Chinese text,

by repealing -

"獲授權人員；及

關長。"

and substituting -

"獲授權人員；

關長；及".

the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; or

- (ii) ensure that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

the dealing is not fair dealing under subsection (1); and

- (b) if the educational establishment -

- (i) adopts technological measures to restrict access to the copies of the fixation through the network so that the copies of the fixation are made available only to persons who need to use the copies of the

fixation for the purposes of giving or receiving instruction in the specified course of study in question or for the purposes of maintaining or managing the network; and

- (ii) ensures that the copies of the fixation are not stored in the network for a period longer than is necessary for the purposes of giving or receiving instruction in the specified course of study in question or, in any event, for a period longer than 12 consecutive months,

subsection (2) applies in determining whether the dealing is fair dealing under subsection (1)."

49 By deleting subclause (1) and substituting -

"(1) Section 244(1) is amended by repealing "an audience consisting of teachers and pupils at the establishment and other persons" and substituting "an audience consisting wholly or mainly of teachers and pupils at the establishment, parents or guardians of

pupils at the establishment, and other persons".

49 By deleting subclause (2).

50 By deleting the clause.

51 In the English text, by deleting the heading and substituting
"Sections added".

51 In the English text, by deleting "is added" and substituting
"are added".

51 In the proposed section 246A(1), by deleting "the Legislative
Council,".

51 By adding after the proposed section 246A -

"246B. Legislative Council

(1) The rights conferred by this Part are not
infringed by -

(a) anything done for the purposes of the
proceedings of the Legislative Council or
for the purposes of reporting such
proceedings; or

(b) anything done by or on behalf of -

(i) the members of the Legislative
Council; or

(ii) The Legislative Council
Commission,

for the purposes of the exercise and
discharge by the Legislative Council of
its powers and functions.

(2) Expressions used in this section have the same
meaning as in section 54B."

New By adding -

**"51A. Legislative Council and judicial
proceedings**

(1) Section 247 is amended by repealing the
heading and substituting "**Judicial proceedings**".

(2) Section 247(1) is amended by repealing "the
proceedings of the Legislative Council or".

52 In the proposed section 258A(1), by adding "primarily" after
"inside a vehicle".

53 In the proposed section 272D(4), by adding -
"(ca) section 246B (Legislative Council);".

53 In the proposed section 272D(4) (d), by deleting "Legislative
Council and".

53 By deleting the proposed section 272E(2) (a) and substituting -

"(a) in relation to a live aural performance, subjects the performance, or causes the performance to be subjected, to derogatory treatment when the performance is caused to be heard in public, broadcasted, included in a cable programme service or made available to the public live;".

55 By deleting the proposed section 273(1) and substituting -

"(1) In sections 273A to 273H, "circumvent" (規避), in relation to an effective technological measure which has been applied in relation to a copyright work -

(a) where the use of the work is controlled through the measure by the copyright owner of the work, means to circumvent the measure without the authority of the copyright owner;

(b) where the use of the work is controlled through the measure by an exclusive licensee of the copyright owner of the work, means to circumvent the measure without the authority of the exclusive licensee; or

(c) where the use of the work is controlled through the measure by any other person who, with the licence of the copyright owner of the copyright work -

(i) issues to the public copies of the work;

(ii) makes available to the public copies of the work; or

(iii) broadcasts the work, or includes the work in a cable programme service,

means to circumvent the measure without the authority of that other person."

55 In the proposed section 273(2), by deleting "the copyright owner of the work" and substituting "any person referred to in subsection (1)(a), (b) or (c)".

56 In the proposed section 273A(1), by deleting everything after "to believe" and substituting ", that he is doing an act which circumvents the measure."

56 In the proposed section 273A(2)(c), by adding ", with the licence of the copyright owner of the work" after "who".

56 In the proposed section 273B(1), by deleting everything after paragraph (a) and substituting -

"(b) exhibits in public, possesses or distributes any relevant device for the purpose of or in the course of any trade or business;

(c) distributes (otherwise than for the purpose of or in the course of any trade or business) any relevant device to such an extent as to affect prejudicially the owner of the copyright; or

(d) provides any relevant service."

56 In the proposed section 273B(3) (c), by adding ", with the licence of the copyright owner of the work" after "who".

56 In the proposed section 273C, in the heading, by deleting "**Criminal liability for**" and substituting "**Offences in relation to**".

56 In the proposed section 273C(1) (f), in the Chinese text, by deleting "目的是" and substituting "以期".

56 In the proposed section 273C(2), by deleting the definition of "circumvention device" and substituting -

"circumvention device" (規避器件) means any device, product, component or means -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;".

56 In the proposed section 273C(2), in the definition of "relevant device", by deleting paragraph (a) and substituting -

- "(a) subject to paragraph (b), means any device, product, component or means -
 - (i) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;
 - (ii) which has only a limited commercially significant purpose or use other than to circumvent the measure; or
 - (iii) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of the

measure;".

56 In the proposed section 273C(2), by deleting the definition of "relevant service" and substituting -

"relevant service" (有關服務), in relation to the

effective technological measure referred to in that subsection, means any service -

(a) which is promoted, advertised or marketed for the purpose of the circumvention of the measure;

(b) which has only a limited commercially significant purpose or use other than to circumvent the measure; or

(c) which is performed for the purpose of enabling or facilitating the circumvention of the measure."

56 By deleting the proposed section 273D(1) (c) and (d) and substituting -

"(c) the act is done for the sole purpose of achieving interoperability of an independently created computer program with the computer program or another computer program;

(d) the copy of computer program in relation to which the act is done is not an infringing copy; and

- (e) the act of identification or analysis referred to in paragraph (b) does not constitute an infringement of copyright."

56 By deleting the proposed section 273D(3) (a) and (b) and substituting -

"(a) where the research is conducted by or on behalf of a specified educational establishment, or for the purposes of giving or receiving instruction in a specified course of study in the field of cryptography provided by a specified educational establishment -

- (i) the research does not constitute an infringement of copyright;
- (ii) it is necessary for the act to be done in order to conduct the research; and
- (iii) the information derived from the research is not disseminated to the public except in a specified manner; or

(b) in any other case -

- (i) the research does not constitute an infringement of copyright;
- (ii) it is necessary for the act to be done in order to conduct the research; and

(iii) the act or the dissemination to the public of information derived from the research does not affect prejudicially the copyright owner."

56 In the proposed section 273D(4), by deleting the definition of "specified educational establishment" and substituting -
"specified educational establishment" (指明教育機構)

means -

- (a) an educational establishment specified in section 4, 6, 7, 8, 9, 12, 14 or 15 of Schedule 1; or
- (b) Hong Kong Shue Yan University registered under the Post Secondary Colleges Ordinance (Cap. 320);".

56 In the proposed section 273D(4), in the Chinese text, in the definition of "指明方式", by deleting paragraph (b) and substituting -

- "(b) 包括在期刊或會議中發布該等資料，而該等期刊或會議的目標讀者或聽眾，屬主要是從事密碼學範疇或有關科技範疇的工作的人或正在修讀密碼學範疇或有關科技範疇的課程的人；".

56 In the proposed section 273D(7), by deleting everything after "technological measure" and before paragraph (d) and substituting -

"if -

- (a) the measure has been applied in relation to a copyright work of any description issued to the public in a physical article;
 - (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis;
 - (c) the act is done for the sole purpose of overcoming the regional coding, technology, device, component or means, as the case may be, contained in the measure so as to gain access to the work;
- and".

56 In the proposed section 273D, by adding -

"(7A) Section 273A does not apply to an act which circumvents an effective technological measure if -

- (a) the measure has been applied in relation to a copy of any description mentioned in section 50(1), 51(1) or 53;
- (b) the act of circumvention is done by the librarian or archivist of a specified library or archive; and
- (c) the act is done for the sole purpose of the doing of any of the acts permitted under sections 50, 51 and 53."

56 In the proposed section 273E, by adding -

"(10A) Section 273B does not apply to a relevant device or relevant service if -

- (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
- (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and

- (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure."

56 In the proposed section 273F(1), by deleting the definition of "relevant device" and substituting -

"relevant device" (有關器件) means any device, product, component or means -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures;"

56 In the proposed section 273F(1), by deleting the definition of "relevant service" and substituting -

""relevant service" (有關服務) means any service -

- (a) which is promoted, advertised or marketed for the purpose of the circumvention of effective technological measures;
- (b) which has only a limited commercially significant purpose or use other than to circumvent effective technological measures; or
- (c) which is performed for the purpose of enabling or facilitating the circumvention of effective technological measures."

56 In the proposed section 273F(2) (b) (iii), in the Chinese text, by deleting "目的是" and substituting "以期".

56 In the proposed section 273F(4) (b) (iii), in the Chinese text, by deleting "目的是" and substituting "以期".

56 In the proposed section 273F(6) (b) (iii), in the Chinese text, by deleting "目的是" and substituting "以期".

56 By deleting the proposed section 273F(11) and substituting -
"(11) Section 273C does not apply to a relevant device or relevant service if -

- (a) an effective technological measure has been applied in relation to a copyright work issued to the public in a physical article;
- (b) the measure contains regional coding or any other technology, device, component or means which has the effect of preventing or restricting access to the work for the purpose of controlling market segmentation on a geographical basis; and
- (c) the sole purpose of the relevant device or relevant service, as the case may be, is to overcome the regional coding, technology, device, component or means, as the case may be, contained in the measure."

56 By deleting the proposed section 273F(12).

56 In the proposed section 273H, by deleting "Secretary for Commerce, Industry and Technology" and substituting "Secretary for Commerce and Economic Development".

56 In the proposed section 273H(b), by adding ", or is likely to be," after "has been".

57 By deleting the proposed section 274(2B) and substituting -

"(2B) If the copyright owner of a work to which rights management information is attached, or the copyright owner's exclusive licensee, is not the person who provides the rights management information, the copyright owner or the exclusive licensee, as the case may be, has the same rights and remedies as the person who provides the rights management information has against the person referred to in subsection (2).".

New By adding -

"60A. Schedule 1A added

The following is added -

"SCHEDULE 1A [s. 198]

BODIES AND AUTHORITIES SPECIFIED FOR
PURPOSES OF DEFINITION OF "SPECIFIED
COURSE OF STUDY"

1. Curriculum Development Council the members of which are appointed by the Chief Executive."."

61 In the proposed Schedule 7, in section 2, by deleting "14, 15, 16, 18, 48, 49, 50," and substituting "15, 16, 18, 48, 49,".

- 61 In the proposed Schedule 7, in section 16(3), by deleting "affects any right of action" and substituting "relieves any person from liability to civil action".
- 61 In the proposed Schedule 7, in section 19, in the heading, by deleting "**section 118(2E)**" and substituting "**section 118(2DA), (2DB), (2E)**".
- 61 In the proposed Schedule 7, in section 19(1), by deleting "Section 118(2E)" and substituting "Section 118(2DA), (2DB), (2E)".
- 61 In the proposed Schedule 7, in section 20(3), by deleting "affects any right of action" and substituting "relieves any person from liability to civil action".

COPYRIGHT (AMENDMENT) BILL 2006

COMMITTEE STAGE

Amendments to be moved by the Honourable Margaret NG

<u>Clause</u>	<u>Amendment Proposed</u>
2(2) [NEGATIVED]	By deleting paragraph (e) and substituting - “(e) section 27(6),(7),(8) and (9)(insofar as it relates to the new section 121(2C) and (2D);”.
27(5) [NEGATIVED]	By adding after the proposed section 121(2C) - “(2D) For the purposes of establishing whether a copy of a work was “lawfully made” an affidavit which purports to have been made on behalf of the copyright owner or any other person entitled to copyright in the country, territory or area in which the copy was made and – <ul style="list-style-type: none"> (a) states the name of the copyright owner or any other person entitled to copyright ; (b) states that a copy of the work exhibited to the affidavit is a true copy of the work; and (c) states that the alleged infringing copy of the work exhibited to the affidavit was not made by <ul style="list-style-type: none"> (i) the copyright owner; (ii) any other person entitled to copyright; or (iii) any person licensed by either of the forgoing persons to make the copy in the country, territory or area in which it was made, shall, subject to the conditions contained in subsection (4), be admitted without further proof in any proceedings under this Ordinance.”.
27(6) [NEGATIVED]	By deleting “or (2C)” and substituting “, (2C) or (2D)”.
27(7) [NEGATIVED]	By deleting “or (2C)” and substituting “, (2C) or (2D)”.

27(8) By deleting “or (2C)” and substituting “, (2C) or (2D)”.

NEGATIVED

27(9) By deleting “or (2C)” and substituting “, (2C) or (2D)”.

NEGATIVED

Annex II

TSING SHA CONTROL AREA BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “Secretary for the Environment, Transport and Works” and substituting “Secretary for Transport and Housing”.
2(1)	In the definition of “Secretary”, by deleting “Secretary for the Environment, Transport and Works” and substituting “Secretary for Transport and Housing”.