

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 8 November 2006

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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 ANDREW CHENG KAR-FOO

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.
THE SECRETARY FOR JUSTICE

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

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

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

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

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

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

CLERKS IN ATTENDANCE:

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

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

PRESIDENT (in Cantonese): We have only 29 Members here. Will the Clerk please ring the bell to summon Members? We need to have one more Member to form a quorum.

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

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

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Prisons (Amendment) (No. 2) Order 2006	243/2006
Shipping and Port Control (Ferry Terminals) (Amendment) Regulation 2004 (Commencement) Notice	244/2006

Other Papers

- No. 22 — Audited Statement of Accounts of the Customs and Excise Service Welfare Fund and its Summary, together with the Director of Audit's Report
- No. 23 — Report on the Administration of the Fire Services Department Welfare Fund, together with the Director of Audit's Report and Audited Statement of Accounts, for the year ended 31 March 2006

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Company Acquisition

1. **MS EMILY LAU** (in Cantonese): *President, in mid-June this year, PCCW Limited (PCCW) consecutively received expressions of interest from two foreign companies in relation to the acquisition of substantially all the telecommunications and media-related assets of PCCW. Nevertheless, the proposed acquisition fell through due to the opposition from China Network Communications Group Corporation, the second substantial shareholder of PCCW. Then, on 9 July, Pacific Century Regional Developments Limited, the major shareholder of PCCW listed on Singapore Exchange, sold all its shares in PCCW, which were approximately 23%, to a company controlled by a Hong Kong businessman. The businessman did not disclose the source of funds for the stock transaction at the time, and it was not until the end of September that he informed the Singapore Exchange that the \$500 million deposit concerned was derived from funds drawn on a facility provided by the father of the Chairman of PCCW. In this connection, will the executive authorities inform this Council:*

- (a) *given that foreign companies are not forbidden by law from holding shares in local telecommunications companies, whether the Government has taken any actions in respect of the intended acquisition of PCCW's assets by the two foreign companies, leading to the termination of the acquisition;*
- (b) *given that while the stock transaction mentioned above involved a change in a substantial shareholder of a listed company, the acquirer was not required to make offers to all the shareholders to buy their shares for the reason that the percentage of shareholdings involved was lower than the triggering point of 30% stipulated in the Codes on Takeovers and Mergers and Share Repurchases (Takeovers Code), whether the authorities will review if the relevant requirements are sufficient for protecting the rights and interests of the minority shareholders; and*
- (c) *whether they will consider following the practice of the Singapore Exchange to require the purchaser to disclose the source of funds whenever an acquisition involves significant changes in shareholdings?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, first of all, I would like to clarify that our securities regulator, that is, the Securities and Futures Commission (SFC), does not comment on individual cases.

The Administration's response to the three questions raised by the Member is as follows:

- (a) As rightly pointed out by the Member, foreign companies are not forbidden by law from holding shares in local communications companies. But any acquisition plan would certainly need to comply with the relevant laws and licensing conditions. In general, the Government would not interfere with the business activities of commercial organizations. The Government and the relevant regulators would act in accordance with the relevant laws and licensing conditions.
- (b) The Takeovers Code are published by the SFC under the Securities and Futures Ordinance, and are enforced by the SFC. In October 2001, the threshold for triggering mandatory offers was reduced from 35% to 30% following public consultation. Before this change the trigger level had been set at 35% since the introduction of the Takeovers Code in 1981. The reduction to 30% reflected market sentiment that 30% represented a more realistic level at which effective control passes and also brought Hong Kong into line with the United Kingdom and China at the time. The 30% threshold is consistent with the current threshold adopted in a number of jurisdictions including the United Kingdom, China and Singapore.
- (c) The SFC and the Hong Kong Exchanges and Clearing Limited (HKEx) are not aware of any provision in the Singapore Listing Rules which requires disclosure of the source of funding for acquisitions of substantial interests in a listed company.

The regulatory requirements of the Hong Kong's securities market are on a par with international standards. The SFC and HKEx have been keeping the regulatory requirements under regular review in tandem with international trends

and market development, with a view to preserving and strengthening the competitiveness of Hong Kong in the international financial markets.

MS EMILY LAU (in Cantonese): *President, the incident related to the acquisition and the significant changes in shareholdings of PCCW have caused a tumult in the past couple of months and aroused enormous attention in the international community. Therefore, the way Hong Kong handles this incident will, as the Secretary said in the last part of his reply, has implications on Hong Kong's status and reputation as an international financial centre. President, in fact, the thrust of my question is how the interest of minority shareholders can be protected. In part (b) of the main reply, the Secretary only stated how the threshold for triggering mandatory offers would be set off, and he said that since the threshold was similar to that adopted by other jurisdictions and thus on a par with the international standards. However, in other aspects, in all the hubbub of the incident, have the authorities perceived the distress of minority shareholders who initially thought that they would benefit from the deal but lost the opportunity all of a sudden? Do the authorities consider it necessary to conduct a review from different aspects or step up regulation to protect the interest of minority shareholders?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, in fact, one of the major responsibilities of the SFC is to protect the interest of investors. Therefore, in this connection, I gave an answer in part (b) of the main reply on the so-called triggering point for takeovers and mergers in response to Ms LAU. Ms LAU has asked a good question about the role played by the regulators in Hong Kong in protecting the interest of small investors, including that related to insider dealings. A team under the SFC — in fact, the HKEx does have a team responsible for the monitoring of movements in share prices, and if they discover any drastic movements in share prices for any special reasons — may conduct investigation. Certainly, as I always do, I will not comment on individual cases. However, the SFC as the regulator does have the responsibility to protect the interest of investors. Ms LAU can thus rest assured, for if there is any movement in the share prices of a company which the SFC as the regulator considers irregular, the SFC will deal with the issue properly.

MR ALBERT HO (in Cantonese): *President, though the Secretary said that he did not want to comment on individual cases, this case does bring to light two causes for concern. First, when the acquiring party was first enquired by the media of the source of funds, the acquiring party seemed to have given statements inconsistent with the facts and only clarified that when the Singapore Exchange made enquiries and requested the disclosure of information. This is the first point. Second, in between the acquisition (the signing of the agreement) and the completion of the transaction, there was a period of time during which shareholders could not be sure whether the transaction would be successful, for we all know the acquisition was a conditional offer. During the period pending the completion of the transaction, who is vested with the right to management? Who is managing the company? The minority shareholders have no way to find out, while the regulating authorities have not requested the disclosure of such information. My supplementary question is: In respect of these two points, does the Secretary consider that the regulating authorities lack the power to request the acquiring party or the company being acquired to make proper disclosure which enable investors to make sensible choices on whether or not they should continue to invest in the relevant companies?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I will first answer the first part of Mr HO's supplementary question. The so-called acquisition in question is not an acquisition, but indeed a transaction. Under the existing ordinances, only the acquisition of shares exceeding 30% of the shareholdings of a company is regarded as an acquisition. Therefore, the incident in question only involves a transaction of shares, for only less than 30% of shares are involved. This is the first point I would like to point out.

With regard to Mr HO's worry that the disclosure of information might lead to changes in the management, I can illustrate my point with a hypothetical situation. If I pay a deposit to purchase some shares, but I have not yet completed the transaction, then theoretically, there will be no change in the management, for if there is any change in the management, an announcement should be made. In respect of this case, no change in management had ever been announced, that meant the shareholders knew clearly that there was no change in the management. Transparency in this respect is very high, particularly when it is related to a listed company. In case of a change in the

management, the management certainly has to announce the names of the Chief Executive Officer, the Finance Director and the Chairman of the Board, and so on. If the company has made no announcement in this respect, it means there is no change in the management. I do not know whether Mr HO finds this answer satisfactory.

MR ALBERT HO (in Cantonese): *President, actually, my supplementary question is very straightforward, but the Secretary has not answered it. That is, in the light of this incident, does the regulatory authority have adequate power to request the disclosure of information?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I reiterate that I will not comment on individual cases. However, the regulatory standard in Hong Kong is on a par with the international standards for we are one of the international financial centres and attach great importance to our regulatory regime. Members may be aware that many large-scale fund raising activities do take place in Hong Kong. A fortnight ago, the Industrial and Commercial Bank of China launched its fund raising programme, the largest in the world, in Hong Kong and sought a listing. This demonstrated that investors had great confidence in the governance and regulation in Hong Kong, otherwise, there would not have been so many investors coming to this market to participate in this activity. Therefore, I hope Mr HO can set his mind at rest for the regulatory regime in Hong Kong has surely reached the international standard. Though it may not be able to gain an edge over other markets in the same region, it at least is on a par with the others.

MR CHIM PUI-CHUNG (in Cantonese): *President, we all learn from the reply of the Secretary that in Hong Kong, the threshold for triggering off takeovers and mergers is 30%. It is reported that the LI Ka-Shing Foundation would join Mr Francis LEUNG's acquisition as a shareholder. If so, will the founder of the Foundation be considered as a connected person? This then leads to another question, that is, in Hong Kong, any person over the age of 18 may not necessarily be a connected person to his or her father or family members. How does the Secretary think about this concept?*

PRESIDENT (in Cantonese): Mr CHIM Pui-chung, the Secretary already said that he would not give answers to comment on individual cases. Perhaps you have to put your question in a different way, so that the Secretary may answer it.

MR CHIM PUI-CHUNG (in Cantonese): *This is not about an individual case, it relates to the 30% threshold of takeovers and mergers.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, since Mr CHIM Pui-chung's question is hypothetical and involves an individual case, I agree with you that if he can put his question in another way, I will be more than willing to answer it.

MR CHIM PUI-CHUNG (in Cantonese): *President, let me put it in another way. If the case proves to contravene the Takeovers Code, how will the Secretary deal with it? Moreover, it is a policy issue, that is, should an individual over the age of 18 be regarded as a connected person? This point should be clarified.*

PRESIDENT (in Cantonese): Mr CHIM Pui-chung, I have given you one more chance but you took it to ask two supplementary questions.....

MR CHIM PUI-CHUNG (in Cantonese): *They are related.*

PRESIDENT (in Cantonese): They are related? If so, which supplementary question do you wish the Secretary to reply?

MR CHIM PUI-CHUNG (in Cantonese): *It does not matter; he may just answer the one he can answer.*

PRESIDENT (in Cantonese): Fine. Secretary, you may give your reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I am not a member of the SFC, so Mr CHIM may not necessarily find my answer satisfactory. However, from my past experience as a member of the Takeovers and Mergers Panel of the SFC, a person over the age of 18 and is not living with his or her family members will be regarded as a separate person theoretically. However, I have to clarify that I still have to confirm this with the SFC, for I have only answered Mr CHIM's question from my memory. I have respect for Mr CHIM regarding his professional knowledge, and I thus hope I can give him an answer. However, since the existing ordinances concerned are amended frequently, I will give a supplement to my reply in writing if my answer is incorrect. (Appendix I) However, as far as I can remember, any person over the age of 18 and is not living with his family members is not regarded as a connected person. I will follow this up, and if there is any disparity between the actual fact and the answer given by me, I will clarify it with Members subsequently.

MR CHAN KAM-LAM (in Cantonese): *President, the Secretary said that he would not comment on individual cases, but President, one should have noticed that this question indeed was asked in the light of an individual case. Therefore, if the Secretary does not answer it pertinently, it will be inappropriate. I, of course, will not pinpoint my question on this case, but I hope the Secretary can give me an answer. After the occurrence of the incident, some people in society tried to cause a stir. The main reason was that in the incident, the father lent money to a third party to purchase the shares from his son, which is the cause of the problem. Investors were a little bit worried about this, for they did not know whether this transaction would involve any conflict of interest. I hope the Secretary can tell the investors clearly that this transaction is a normal business activity which does not involve the problems in question, and the whole activity or the business transaction is indeed conducted under the close supervision of the Government and the SFC.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the SFC monitors the activities of all listed companies, including changes in shareholdings and acquisitions. I would like to explain here that an ordinance has been put in place whereby the SFC can require a listed company to submit a report to the HKEx and the SFC whenever changes in its shareholdings exceed 5%. In other words, all transactions are carried out in

transparency. Moreover, if the company concerned mortgages its shares to a third party but not a bank or a brokerage house, it will have to declare this in the report submitted to the HKEx and the SFC. Therefore, the ordinance concerned is very stringent. They know the rules of the game full well, that they cannot break those rules. I reiterate that the regulatory standard in Hong Kong is on a par with international standards. I hope Mr CHAN will not worry, for the regulatory authorities will monitor this transaction closely.

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

MR JAMES TO (in Cantonese): *President, I notice that the explanation given by Secretary Frederick MA in his reply with regard to the definitions of separate persons and connected persons seems to be inconsistent with the final decision made by the Singapore Exchange in denying certain persons of the right to vote. Certainly, the legislation of the two places may differ, which is not uncommon, but I hope the Secretary can examine it thoroughly.*

Here is my supplementary question. Though we do not talk about the disclosure of source of funds in general, regarding the non-disclosure of source of funds under specific circumstances, may I ask the Secretary, first, how the mechanism under the Listing Rules that subjects a connected transaction to the approval of an independent shareholder can be enforced; and second, how requirements related to the cross-market share of telecommunications companies in respect of takeovers and mergers can be enforced?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, will you please ask Mr TO to repeat the second part of his supplementary question?

MR JAMES TO (in Cantonese): *The second part of my supplementary question is about the issue of market share under the Telecommunications Ordinance, that is, in this specific scenario, when the incident involves the non-disclosure of source of funds of a telecommunications company, how the authorities can enforce the underlying anti-trust provision and the relevant statutory provisions*

aiming to prevent the excessive holding of market share or the inter-companies market share of a company?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, responding to the first part of Mr TO's supplementary question, actually, the ordinance on takeovers and mergers does provide for the definition of a "connected transaction". Moreover, a committee comprising members of the trade and lay members has been established, and members of the SFC (including the Executive Directors) are also members of this committee. They will specify whether an individual takeover and merger exercise is a connected transaction. In other words, a genetic relationship does not necessarily be involved to render a transaction a connected transaction. Many past examples indicate that the SFC may prove the parties concerned do make a colluded effort to takeover a company, and though these parties do not seem to be connected superficially, they will be regarded as connected. Therefore, this is a very complicated subject which involves not only the establishment of a genetic relationship or a business relationship but also many other issues. In respect of transactions which the SFC considers problematic, legislation on takeovers and mergers has been put in place to protect the interest of investors, and all these transactions are subject to the investigation of the committee. This is the first point I would like to make.

Second, Mr TO asked about the Telecommunications Ordinance. My point is that, according to section 7P of the Telecommunication Ordinances, the Telecommunications Authority may conduct investigations in respect of any changes in relation to a carrier licensee and form an opinion as to whether or not the change has, or likely to have, the effect of substantially lessening competition in a telecommunications market. And if the Telecommunications Authority considers that the changes concerned have, or likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may direct the carrier licensee concerned to take action as the Authority considers necessary to eliminate or avoid any such effect.

As to what circumstances constitute a change in relation to a carrier licensee, it is set out in detail in section 7P(16) of the Telecommunications Ordinance. I am no expert on this, so I will not go into the details. I hope Mr

TO will understand that we do have a lot of regulations to provide against the scenario mentioned by him earlier.

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

MR JAMES TO (in Cantonese): *President, the Secretary has not yet answered the first part of my supplementary question, for I have not mentioned the issue of kinship. I asked that under certain specific circumstances, when the disclosure of source of funds was not required under the Listing Rules, how the complicated mechanism as the Secretary so claimed could be implemented. Does it only require the examination by several members and will be passed after that? The Secretary has not yet answered that supplementary question.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, in respect of regulatory ordinances — I hope I have explained clearly earlier on that in respect of regulation, in the case of Hong Kong — it is the responsibility of the SFC and the HKEx. If Mr TO would like to point out any specific situation, I am prepared to relay his question to the SFC which will give a reply to him in writing.

PRESIDENT (in Cantonese): Second question.

Vacancy and Misuse of Factory Buildings

2. **MR WONG TING-KWONG** (in Cantonese): *President, regarding the problem of factory building units being left vacant and misused, will the Government inform this Council:*

- (a) *of the respective numbers and areas of factory building units owned by the Government and the private sector at present, as well as their respective utilization rates and the number of cases in which such units were used for residential purposes in the past two years;*

- (b) *whether it has assessed if the implementation of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) can improve the vacancy level of factory buildings in Hong Kong; if it has, of the results; if it has not, the reasons for that; and*
- (c) *whether it has studied ways to improve the situation of factory building units being left vacant and misused, and whether it has explored relaxing the restrictions on the uses of factory buildings, including introducing amendments to the definition of "factory" under the Factories and Industrial Undertakings Ordinance (Cap. 59), and further expanding the scope of permitted uses of industrial buildings specified by the Town Planning Board (TPB); if so, of the results; if not, the reasons for that?*

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

- (a) At present, there are 10 factory estates under the Housing Authority (HA). Excluding those old factory buildings which are soon to be demolished and thus not put up for rent, the HA provides more than 8 200 units, with total internal floor areas of over 200 000 sq m. The utilization rate of the factory buildings of the HA reached 97% in the past two years. During the same period, the HA had not found any case in which their factory buildings were used for residential purposes.

According to the Rating and Valuation Department, as at the end of 2005, the total internal floor areas of the private flatted factories were over 17.468 million sq m, and the utilization rate reached above 90%. In the past two years, the Lands Department found that 57 units of the relevant factory buildings were used for residential purposes.

- (b) In 2004, the Administration conducted a study on the impact of the first phase of the CEPA on the Hong Kong economy, and the findings of the study were reported to the Legislative Council in April 2005. The findings showed that 4% of the responding companies expressed that there had been an increase in the area of

premises used for business operations, and that 5% would expect an increase in 2005. Another study on the impact of CEPA on the Hong Kong economy is being carried out by the Administration and the findings will be reported to the Legislative Council in 2007.

- (c) With the structural transformation of Hong Kong industry, the industrial activities have been shifted from manufacturing and production-oriented to more diverse management/service-oriented and information based. To tie in with the development, the TPB introduced a number of measures in the past decade to meet the transformation.

The measures include expanding the definition of "Industrial Use", which includes activities in which articles are manufactured, altered, cleansed, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, or where goods and cargo are stored, loaded, unloaded or handled, or where the training, research and development, design work, quality control and packaging related to the above processes are carried out.

Permitted uses in the "Industrial" zone now include "office related to industrial use", "IT and telecommunications industries" and "research, design and development centre" related to industry.

The TPB also introduced the "Other Specified Uses (Business)" zone, specifying that non-polluting industrial, general office and commercial uses are permitted in this zone, which has increased the flexibility in the use of industrial land. Since 2001, 246 hectares of land and land originally zoned as "Industrial" have been rezoned to other land uses, including "Business", "Residential", "Comprehensive Development" and "Commercial".

The Planning Department will continue to monitor the supply and demand of industrial land as well as the situation regarding the use of industrial buildings, and will consider measures from the land use planning front as appropriate when the needs arise.

Meanwhile, the Lands Department has allowed users of premises designated for industrial use to change their industrial buildings into

other suitable uses through application for short-term waivers. Each application in general takes only three to five months to complete.

The Factories and Industrial Undertakings Ordinance aims at safeguarding the occupational safety and health of employees working in factories and industrial undertakings, but not at specifying the user restrictions on factory building units. Whether to relax the user restrictions on factory building units to facilitate their conversion into other uses does not fall within the coverage of the Ordinance.

MR WONG TING-KWONG (in Cantonese): *My supplementary question is: What is the number of applications for change of land use of factory building sites in the past two years? What are the numbers of successful and unsuccessful applications, and the reasons for that?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, I do not have the actual figures in hand. However, I am happy to provide them in writing. (Appendix II)

PRESIDENT (in Cantonese): There are altogether eight Members waiting for their turns to ask supplementary questions. Will Members putting supplementaries please be as concise as possible.

MR JAMES TIEN (in Cantonese): *Madam President, I very much agree with the Government's reply that the use of industrial buildings has changed in many respects as a result of the structural transformation of industry in the past few years.*

However, regarding part (c) of the main question raised by Mr WONG, the problem of factory building units being left vacant and misused is indeed interrelated. In other words, more vacant units will give rise to more serious misuse. May I ask the Government, given that one of the major problems is the

old industrial buildings being divested after transformation cannot be resumed afterwards, so these buildings became more dilapidated, hence resulting in such a high vacancy rate, whether the Government has drawn up any plans accordingly? And, what measures will be taken?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, I have stated clearly in the main reply that, while the average utilization rate of factory buildings owned by the Government, that is, factory buildings of the HA, reached 97%, which is indeed very high, the rate of privately-owned factory buildings also exceeded 90%. Therefore, it cannot be said that the utilization rate is low.

Why are the utilization rates so high? Just as I have said in the main reply, this owes much to the past efforts of the TPB, which changed some industrial sites into other uses on its own initiative and allowed other development purposes. Take San Po Kong as an example. We all know that it used to be an industrial zone, but now nearly all the sites in San Po Kong have changed into other uses mentioned by me in the main reply, including "Business" zone. While some sites have been converted, the land use of those that have yet to be converted has already changed. These are the measures we have taken.

In this connection, the figures set out in my main reply can illustrate this point. For example, since 2001, 246 hectares of land originally zoned as "Industrial" have been rezoned to other uses, which include "Business" zone and even "Residential" zone. Land will certainly be rezoned to residential use if residential buildings can be built. There are such other uses as "Comprehensive Development" and other designated uses, say, "Business" zone as mentioned earlier. As a result of our proactive effort in making so many changes where the use of a number of industrial sites has changed, the problem has therefore been alleviated.

I said earlier that such effort would continue having regard to the circumstances and subject to the feasibility of the approach from the land use planning front as appropriate when the needs arise, we can therefore see that the number of industrial sites available in the future actually depends on our needs. And when the needs arise, the number of industrial sites will gradually reduce to make way for other uses with a view to reducing the vacancy rate.

MR JAMES TIEN (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I pointed out that the existing situation is attributable to the failure to resume divested buildings, but he has not answered this part of the question.*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, once a building was divested, the land use of the relevant site also changed. If one day someone finds that the site carries redevelopment value, he may have to undergo some rather complicated and cumbersome procedures to buy those units one by one. Although this is certainly not a desirable approach, it is after all a viable option in view of the need for improvement.

MR TAM YIU-CHUNG (in Cantonese): *The Government stated in the main reply that, in general, applications for short-term waivers of change of land use into other suitable uses take about three to five months to complete. May I ask the Secretary why it takes as long as three to five months? I wonder how many applications took three months and how many of them took five months. But, in short, the time required is too long. Is it attributable to the numerous applications received, a lack of manpower, a delay in the approval process as a result of your reluctance to approve, or the vetting and approval requirement being too stringent? What actually are the reasons?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, we must understand that it is not necessarily viable to use an industrial zone for either business or residential purpose. The main reasons are, for example, not many parking spaces are available in the industrial zone, or the sewage system originally designed for industrial use cannot cope with the large quantities of sewage. There are such other reasons as the impact on health and fire safety, which also have to be taken into account.

Therefore, upon receipt of an application for change of land use, we will have to go through certain time-consuming procedures, during which other government departments will be consulted. Advices will then be given on whether or not the change in question can be allowed from different angles; and if approval is granted, the requirements to be met and the desired use. Therefore, considerable time will be required for such work.

The time required is actually shorter than that in the past because we have the so-called "one-stop service", whereby a department is charged with the responsibility to liaise with other departments.

MS MIRIAM LAU (in Cantonese): *Madam President, vacant factory buildings can be found in Tsuen Wan and Kwai Tsing, which are very near to our container terminals. Over the past years, the logistics industry has proposed the conversion of these vacant factory buildings systematically into logistics facilities, or even the demolition of them for the construction of a logistics park. Does the Government consider this proposal feasible? If yes, what will be done? Will it draw up relevant plans to complement the change?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, this is a very good idea. In fact, we are considering it, prepared to take it on board. However, in this connection, the TPB should first consider what purposes the site can be used for. As I have said in the main reply, the purpose of relaxing the definition of "Industrial Use" and the permitted use is precisely to pave way for these changes to take place.

Although the changes can take place in terms of concept, it can be possible only with the availability of relevant ancillary facilities. Furthermore, the requirements of other department as mentioned earlier must also be met, and this is what we are doing at the moment.

MISS TAM HEUNG-MAN (in Cantonese): *President, in the second paragraph of part (a) of the main reply, the Secretary said that 57 units had been found to be used for residential purposes. May I ask the relevant authority what measures are in place to resume the units converted into residential use and what are their effectiveness?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, if the use of the factory buildings in question is found to have changed and contravened the original land lease, legal actions will be taken to require the parties concerned to revert the relevant units back to their original use. A failure to revert the relevant units may risk prosecution. Efforts have been

made in this respect, and as far as I know, the relevant units have already been reverted back to their original use, that is, industrial use.

MRS SELINA CHOW (in Cantonese): *President, I find the figures provided by the Secretary somehow strange. Despite a large number of factories having moved northward, the utilization rate of factory buildings still stands at over 90%. The Secretary explained that it is attributable to the change and relaxation of land use, and yet, over 90% of the factory buildings are currently occupied. I really have doubts about this.*

I wish to ask the Secretary if he is aware of the following situation. While some factory units have been converted into retail and wholesale uses, applications for change of use submitted thereafter were rejected, which could have been approved if they were submitted earlier. Perhaps approval was granted by the relevant authority to the earlier applications on such grounds as fire safety or other requirements, whereas applications submitted thereafter were all rejected. Is the Secretary aware of this situation? Will the Secretary handle the cases in a more relaxed or flexible manner? Or will he provide a way out for these people, instead of forcing them to move out of the units and leaving those units vacant where no other useful purposes can be served?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, although the Honourable Member did not ask me to answer the first part of her supplementary question, but I think I had better give a brief explanation here.

In fact, factory buildings have wide range of uses, including storage and warehouse. So, the majority of these factory units are used for this purpose, but not necessarily for production. This explains the situation where 90% of these units are used for this purpose.

With regard to part (b) of the supplementary question, President, just as the Member has said, very often we have to consider whether the building in question can cope with so many activities. We cannot assume that the whole building can be used for the same activity simply because one of the units has

been converted to undertake that activity. This is impossible. For example, the area of a car park is limited, so any exceedance will render the activity impossible; the size of the drainage pipes is fixed; the width of the roads is fixed and the amount of traffic flow is also fixed, so we certainly cannot grant approval indefinitely to all subsequent applications. In this connection, I think that the party responsible for building management or the landlord himself should have a clear understanding of the situation.

MRS SELINA CHOW (in Cantonese): *President, the Secretary has not informed me if the Government will consider using a more flexible approach to help the tenants or landlords concerned?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, there is indeed a possible remedy. They are now permitted to undertake activities temporarily.

A long-term solution is, as I have mentioned in the main reply, to change the land use. The proper way is to demolish and rebuild the whole industrial building for other uses. If it is used for, say, business purpose, the design should cater for the need of business development, it is therefore necessary to include certain ancillary facilities when the site is formed.

As for the existing or old industrial buildings, what we can do is to allow them to be converted for temporary purposes. And yet, they are only allowed to be used up till a certain time, but not indefinitely. To tackle this problem, the site should be redeveloped to fit its proper purposes.

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

PROF PATRICK LAU (in Cantonese): *President, in reply to part (c) of the main question raised by Mr WONG, the Secretary stated clearly that the definition of "Industrial Use" has been expanded to allow industry-related uses*

including "office related to industrial use", "IT and telecommunications industries" and "research, design and development centre". I wish to ask the Secretary: Is it necessary to pay regrant premium in respect of the land lease when an application for such change of land use is submitted to the Lands Department?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, the short answer is "yes" because the previous payment was no longer applicable following a change in land use.

Allowance has been made on the planning front. If an application in relation to planning is submitted, a request for modification of the relevant land lease should also be made to the Lands Department. In considering the lease modification, the amount of regrant premium payable will be determined at the same time.

PROF PATRICK LAU (in Cantonese): *I wish to ask if it is necessary to do so "in the short term". I mean "in the short term".*

PRESIDENT (in Cantonese): *Do you mean "in the short term"?*

PROF PATRICK LAU (in Cantonese): *Yes. Is there such need "in the short term"?*

PRESIDENT (in Cantonese): *Secretary, it relates to applications for change of use "in the short term".*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, I mentioned earlier that short-term use is allowed, and this is exactly the case. However, the required payment is not regrant premium, but "toleration fee". In other words, the payment for temporary use is called "toleration fee".

PRESIDENT (in Cantonese): Third question.

Protection of Consumers' Rights and Interests

3. **MISS TAM HEUNG-MAN** (in Cantonese): *President, regarding the protection of consumers' rights and interests, will the Government inform this Council whether it will:*

- (a) *consider reviewing the existing legislation on consumers' rights and interests, with a view to stepping up efforts to combat unscrupulous business practices;*
- (b) *amend the Sale of Goods Ordinance and the Trade Descriptions Ordinance, so as to bring into their ambit such matters as services, online auctions, making false or misleading statements in the sale of flats; and*
- (c) *consider conferring on the Consumer Council, in dealing with consumers' complaints, the statutory power to order the persons concerned to provide information?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, in considering the general issue of whether to prepare new legislation to protect consumers' rights and interests, the Government would consider:

- (i) the extent to which legislation already exists to protect consumers;
- (ii) whether legislation is the most appropriate approach to dealing with a particular problem; and
- (iii) the potential impact of the proposed legislation on business and consumers.

With these general points in mind, I would answer the three parts of the question as follows:

- (a) There is currently a considerable body of legislation in place that has the aim, either entirely or in part of safeguarding the interests of consumers. For example:

- (i) the Trade Descriptions Ordinance (Cap. 362), which prohibits false trade descriptions, false marks and misstatements in respect of goods provided in the course of trade;
- (ii) the Weights and Measures Ordinance (Cap. 68), which contains provisions with respect to units and standards of measurement and weighing or measuring equipment used for trade and to regulate trade transactions regarding goods supplied by weight or measure;
- (iii) the Unconscionable Contracts Ordinance (Cap. 458), which empowers the Courts to refuse to enforce, or to revise unconscionable terms in consumer contracts for the sale of goods or supply of services;
- (iv) the Supply of Services (Implied Terms) Ordinance (Cap. 457), which stipulates that a supplier of a service is obliged to carry out the service with reasonable care and skill and within a reasonable time; and
- (v) the Sale of Goods Ordinance (Cap. 26), which provides that where a seller sells goods in the course of a business, there are implied conditions in the relevant contract of sale, such as that the goods supplied are of merchantable quality and that a buyer has the right to reject defective goods unless he or she has a reasonable opportunity to examine the goods.

To complement this legislation, we further adopt a three-pronged approach to tackling and raising awareness of unscrupulous business practices by: promoting good trade practices, taking action against unscrupulous traders, and enhancing consumer education. Specifically, in promoting good trade practices, we support the Consumer Council in its efforts to educate business sectors, for example, through regular forums and seminars and the drawing up of codes of practice. In addition, the Hong Kong Tourism Board (HKTB) has continued to promote its Quality Tourism Services Scheme, which not only helps consumers in identifying quality services, but also gives recognition to participating organizations.

As regards action against unscrupulous traders, the police and the Customs and Excise Department (C&ED) carry out regular enforcement campaigns. In addition, the Consumer Council keeps a close watch on trade practices and, if appropriate, names the shops involved in malpractices to heighten consumers' awareness.

As for enhancing consumer education, we believe that educating consumers so that they can exercise their rights and make sound choices is fundamental to safeguarding their interests. We liaise closely with the relevant organizations, such as the Consumer Council and the HKTB, and support their efforts to promote consumer education.

Nonetheless, we would continue to review the situation and should specific malpractices arise, which require the enactment of new consumer protection law, we would not hesitate to develop appropriate proposals for further consultation and discussion.

- (b) The Government's primary objectives in consumer protection policy are to ensure that the products procured by consumers are safe, the quality of the products is in accordance with their reasonable expectations, and the terms of sale are fair.

As for the specific matters mentioned in the question, various existing legislation is in place to deal with diverse problems that may arise. In relation to services, as mentioned in part (a) above, the Supply of Services (Implied Terms) Ordinance (Cap. 457) stipulates that a supplier of a service is obliged to carry out the service with reasonable care and skill and within a reasonable time. Consumers may take civil action if they are not satisfied that the supply of services has been properly carried out.

With regard to online auctions, it should be noted that the issue in question is still essentially the sale of goods. Hence, the current legislation for consumer protection would still apply to these goods. For example, the Trade Descriptions Ordinance (Cap. 362) is also applicable to combat the unscrupulous supply of goods, whether this is done online or through other means, provided that the wrongdoer

supplies goods bearing a false trade description or a forged trademark. As for the sale of flats, if a property is sold by means of fraudulent behaviour or misrepresentation, then the seller may be criminally liable under the Theft Ordinance (Cap. 210) or under common law for breach of contract. If estate agents are found to have made false or misleading statements, the Estate Agents Authority will take disciplinary action under the Estate Agents Ordinance (Cap. 511) against the concerned estate agents.

- (c) The functions of the Consumer Council, as set out under section 4 of the Consumer Council Ordinance (Cap. 216), are, amongst other things, to protect and promote the interests of consumers of goods and services and purchasers, mortgagors and lessees of immovable property by:
- (i) collecting, receiving and disseminating information concerning goods, services and immovable property;
 - (ii) receiving and examining complaints by and giving advice to consumers of goods and services and purchasers, mortgagors and lessees of immovable property;
 - (iii) taking such action as it thinks justified by information in its possession, including tendering advice to the Government or to any public officer; and
 - (iv) encouraging business and professional associations to establish codes of practice to regulate the activities of their members.

In resolving complaints with pursuable grounds, the Council frequently acts as a mediator between consumers and the traders concerned. Figures provided by the Consumer Council indicate that over 90% of complaint cases are resolved through mediation. Given the Consumer Council's major role as a mediator, a statutory power to order the provision of information may not be essential to its work. This notwithstanding, we are prepared to keep an open

mind and review the situation if future developments show that the community considers that this is the direction we should explore.

In many other cases, the Council provides support and advice to consumers so that they can take action through the Courts, under the existing consumer legislation mentioned above.

It should also be noted that, as the major enforcement agency for consumer legislation, the C&ED has appropriate investigation powers, including the power to authorize the search of premises, seize goods or require the testing of products.

MISS TAM HEUNG-MAN (in Cantonese): *The Secretary's reply gave me an impression of passiveness, so I wish to ask a follow-up question.*

According to the Secretary, the Government does not have any plans to enact any legislation but will only study appropriate proposals. I wish to ask a supplementary question on the protection of consumer rights. Recently, many cases of "zero-fare" tour groups have occurred, much to the detriment of Hong Kong's reputation as a Shoppers' Paradise. Can the Government tell us or provide us with more detailed information to show that the existing legislation can already sufficiently protect consumer rights?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I wish to point out that many of our existing ordinances are on protecting the interests of consumers. All these ordinances are already set out in my main reply just now, so I do not intend to make any repetition and waste Members' time.

The most important thing is that fraud and duress are both criminal offences, whether under the ordinances I have mentioned or common law. Currently, the protection of consumer rights is already provided for in law, whether in our statutes or common law.

As for "zero-fare" tour groups, I do not think that they have anything to do with matters of legislation. We are currently taking many actions on this.

Madam President, the Panel on Economic Services will actually discuss this issue around the 20th of this month. If I have to say anything now, I think I will give a detailed account on how such tour groups should be regulated. But I believe it will be more appropriate to discuss this matter on the occasion mentioned above.

MR FRED LI (in Cantonese): *President, I also wish to follow up a similar issue, but I hope that the Secretary can give us a clear reply.*

The Consumer Council Ordinance was enacted many years ago, but it has never been reviewed. Given the rising awareness of consumer rights these days, will the Government seek to enhance consumer rights by reviewing the Consumer Council Ordinance, with particular reference to the fact that in dealing with consumer complaints now, the Consumer Council does not have any power to require the shop concerned to provide information? Currently, the Consumer Council is still not vested with such statutory power. It has to depend on the voluntary co-operation of the shop concerned, and, its most powerful weapon is simply the announcement of shop names to achieve a deterrent effect. Will the Government conduct any special review of this and consider whether it is necessary to highlight the need for such a power in the Consumer Council Ordinance? And, will it also conduct a comprehensive review of the ordinance?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Actually, Mr LI's supplementary question involves the role of the Consumer Council. What he talks about may lead to some fundamental changes. The changes will be fundamental, for example, if the Consumer Council is to be vested with the powers of obtaining information and investigation. If all such changes are to be introduced, we must then ask what support measures there should be. After the Consumer Council has obtained the information concerned, for example, how should we handle the issues of enforcement and prosecution? Should we continue with the existing practice of asking the police and the C&ED to follow up? Or, what otherwise? I think this will be a very fundamental problem.

As pointed out in my main reply just now, we keep an open mind on this and we are prepared to review the situation when necessary. As a matter of fact,

we have recently explored issues of such a nature with the Consumer Council. As Members are aware, we keep an open mind on various issues such as the enactment of a fair competition law. And, Members can notice that we have made real efforts and published a consultation paper. With regard to the protection of consumer rights, I believe our attitude will always be positive and open. We will review the situation in the light of need.

MS AUDREY EU (in Cantonese): *I have recently read a press report published in October. According to the findings of the United Nations International Crime Victim Survey, Hong Kong has one of the highest rates of consumer fraud — 21.7%. And, the rate for Japan is just 2.3%. President, this shows that all the legislation and work of the Consumer Council as mentioned by the Secretary in the main reply, including the Consumer Council's efforts to educate business sectors, have failed to achieve any effect. It is therefore necessary to install an "upgraded version".*

May I ask the Secretary how he is going to tackle this problem? Hong Kong is a Shoppers' Paradise, but its rate of consumer fraud is the highest among all the modernized places in the world. Can any explanation be offered? Does the Secretary have any new measures to tackle all these problems? Apart from asking the Consumer Council to continue with its efforts of educating business sectors, will the Secretary also consider the possibility of strengthening its bite? Apart from investigation power, will the Consumer Council also be vested with prosecution power and the power of representing consumers in lawsuits, as mentioned by Mr Fred LI just now? Will the Secretary consider all these measures, which are more modernized and effective?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Many thanks to Ms Audrey EU for her question. The simple answer to her question is "yes". Like Ms Audrey EU, we have also been following all such figures closely, and we have also noticed cases of visitors being lured into shopping. We are currently exploring the best course of actions. Although I have mentioned in my main reply that there is a whole host of existing legislation to regulate all this, I must nonetheless add that there are still a number of enforcement problems, such as proof and others.

We are currently keeping watch on the situation and conducting discussions and exploration with the Consumer Council. Naturally, we must enhance education, but this can only play a supporting role. We must still formulate a code of practice. With regard to enforcement, the first question is how we can step up enforcement. The second question is how we can strengthen all the laws under the present situation. For example, is it necessary to strengthen the laws to deal with cases involving misrepresentation, misleading statements and service quality? As I have pointed out in my reply just now, we do keep an open mind on all these issues and we are prepared to conduct a review to identify those areas that require further efforts.

MS AUDREY EU (in Cantonese): *President, the Secretary has not answered my supplementary question, especially the part on the Consumer Council's bite. Will the Government give the Consumer Council any prosecution power or the power of representing consumers in lawsuits? This is the only question I asked the Secretary.*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, actually, when I replied to the questions of other Members, I already pointed out that we would conduct some studies on this. But since this may lead to fundamental changes in the role and power of the Consumer Council, we must ask what should be done with enforcement if the Consumer Council is to be vested with investigation power. This may necessitate a complete change in the structure of the Consumer Council. It may also be necessary to increase its powers and staff establishment. Then, we must also explore how to define its role and those of other enforcement agencies. That said, I still think that the idea is worth considering. Therefore, my answer is that we will explore the idea.

MR LEE WING-TAT (in Cantonese): *President, the Secretary's first round of replies today has been very positive. I only wish to ask a follow-up on part (b) of the main reply, which is about the sale of flats, because these are my "must-ask" areas.*

In the first round of sale, a property developer may set a price, and then the general manager will state confidently that the price will definitely rise half a

year or one year later. But what actually happens is that the property developer simply cuts the price by 20% half a year later. May I ask the Secretary whether this can be considered as misrepresentation? Have the authorities ever received any such complaints? Have the authorities ever conducted any investigation on this? Besides, if the powers of the Consumer Council are really expanded in the future, will it also be vested with the power of dealing with this kind of infringement of consumer interests involving such "predators"?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Many thanks to Mr LEE for his question. I must say that I cannot answer Mr LEE's supplementary question. I am aware that there are such cases now. But, first of all, I have to point out that I must seek legal advice to ascertain whether there are any misrepresentation and misleading statements in any individual cases. If yes, we may be able to stage prosecution. That is why I cannot answer Mr LEE's question now. I think we must look at the unique circumstances of individual cases and seek legal advice. However, Mr LEE's supplementary question can indeed point to the problems with the current situation. All of us are very concerned about these problems. We hope that we can draw up a clear definition of misrepresentation and misleading statements for the general public.

It is of course not easy to do so, not least because the sale of flats is involved. And, I have discussed this issue with Secretary Michael SUEN. Besides, the sale of flats also involves the Real Estate Developers' Association of Hong Kong and the Estate Agents Authority. In brief, yesterday evening, the Policy Bureau of Secretary Michael SUEN, the Consumer Council and the two organizations I have just mentioned had a meeting to discuss how the sale of flats should be regulated and what punitive measures are required. Therefore, I think that the Housing, Planning and Lands Bureau is in fact more than ready to explore whether there is any need for more efforts in this respect.

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

MR LAU KONG-WAH (in Cantonese): *The Secretary has given a huge array of legislation on protecting consumer rights. But every year when the*

Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) conducts a survey on expired foods, such foods are invariably spotted. And, members of the public also tell us frequently that they have spotted expired foods. This obviously reflects that the problem is very widespread. May I therefore ask the Secretary whether all the problems with food safety and the failure to protect public health are caused by inadequate enforcement? Or, is that because there are loopholes in the law that must be plugged immediately?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the question asked by Mr LAU Kong-wah mainly involves food safety and public health. I wish to leave the question to Secretary Dr York CHOW for a reply in writing. (Appendix III)

PRESIDENT (in Cantonese): Fourth question.

Trial of Cases Committed in Hong Kong on the Mainland

4. **MR JAMES TO** (in Cantonese): *President, the murder case in Luk Yu Tea House & Restaurant came to trial recently in a mainland Court. Although the case occurred in Hong Kong and involved five Hong Kong people, it was heard by a court in the Mainland. In this connection, will the Government inform this Council:*

- (a) *of the reasons why the murder case which took place in Hong Kong came to trial in the Mainland and not in Hong Kong, and the legal basis for such an arrangement; whether it has considered if such an arrangement would contravene the provisions of the Basic Law regarding the jurisdiction of Hong Kong and the principle of "one country, two systems"; if it has, of the results of its consideration;*
- (b) *whether the Chief Executive or the Secretary for Security has requested the mainland authorities to surrender the suspects to Hong Kong; if so, of the way and process by which the request was made; if not, whether any other officials of Hong Kong have made such a request; if they have, of the requesting department(s), the rank(s) of the official(s) making the request, as well as the way and process by*

which the request was made; and the mainland department(s) and the rank(s) of the official(s) approached, as well as their replies; and

- (c) *whether the mainland authorities have requested the Government of the Hong Kong Special Administrative Region (SAR) to assist in providing information relating to the case; if they have, of the information requested, the way and process by which the request was made, and whether such information includes those materials obtained with statutory authority (including the powers to search and seize) conferred by the laws of Hong Kong?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) Under Article 19 of the Basic Law, Hong Kong Courts have jurisdiction over any person who is alleged to have committed an offence under Hong Kong's criminal law. As the *Luk Yu Teahouse* case occurred in Hong Kong, Hong Kong Courts have jurisdiction over it. However, like the Courts of other jurisdictions, Hong Kong Courts do not have "exclusive jurisdiction". There are situations in which another country or jurisdiction is entitled, under its own laws, to institute criminal proceedings against a person alleged to have committed an offence in Hong Kong. Similarly, there are situations in which proceedings may be brought in Hong Kong Courts for offences committed outside Hong Kong.

According to the existing administrative arrangement between Hong Kong and the Mainland, the Mainland may return to Hong Kong those Hong Kong people having committed crimes solely in Hong Kong. However, this arrangement is not applicable to cases over which the Mainland has jurisdiction. In addition, if the suspects concerned were first arrested by the mainland authorities, mainland Courts would be entitled to first deal with the offences committed by the suspects in the Mainland and to proceed with the trial.

Internationally, it is not uncommon for two or more places to have concurrent jurisdiction over the same case, depending mainly on the jurisdiction conferred by the relevant laws of these places. For a crime occurring in one place, for example, another place may have

jurisdiction because the crime was planned there, or was completed there, or because one or more elements of the crime occurred there. Hong Kong's own criminal law also reflects this principle. For example, under section 5 of the Offences against the Person Ordinance, it is an offence for any person in Hong Kong to conspire to murder any other person anywhere in the world. In 1998, a person was convicted in Hong Kong's Court of First Instance of the offence of conspiracy in Hong Kong to commit a murder in Singapore.

We understand that the Hong Kong people arrested in the present *Luk Yu Teahouse* case were suspected of having committed the offence of "intentional homicide" under Article 232 of the Criminal Law of the People's Republic of China. The mainland procuratorate authorities considered mainland Courts to have jurisdiction over this case on the ground that the suspects' preparatory criminal acts took place in the Mainland.

There is no inconsistency between the handling of this case and the usual international practice of dealing with concurrent criminal jurisdiction. There is also no contravention of the Basic Law and the principle of "one country, two systems".

- (b) Under the existing police co-operative arrangement between the Mainland and Hong Kong, the police are the authority liaising with the mainland public security authorities. All along and in accordance with the existing administrative arrangement between Hong Kong and the Mainland, if Hong Kong would like to request the Mainland to return to it Hong Kong people who have committed crimes in Hong Kong, the police would raise the requests with the mainland public security authorities.

In this case, according to established practice, the police have, on behalf of the SAR Government, written to the mainland public security authorities to request for the return of the Hong Kong people concerned then involved in this case.

The corresponding public security authority in the Mainland responded that as the relevant preparatory criminal acts took place in the Mainland, the Mainland has jurisdiction over this case.

- (c) During the investigation of this case, the mainland public security authority has, according to the general international police co-operation arrangements, requested the Hong Kong police to provide relevant information and intelligence, including photographs and receipts related to the case and copies of the statements made by the victim's friends, relatives and witnesses.

In response thereto, the Hong Kong police have provided certain information to the mainland public security authority. Such information was all legally obtained by the police.

MR JAMES TO (in Cantonese): *President, we are now talking about a murder which has already taken place, not a case of attempted murder. The case is now being heard in the Mainland for intentional homicide — they are hearing a preparatory act. All forensic examinations of the exhibits have taken place in Hong Kong. As it is pointed out in part (b) of the main reply that the Hong Kong police can request the Mainland to surrender such Hong Kong people to the SAR for trial, then in principle there should not be a problem, other than whether we have made our best efforts to do so, then may I ask the Secretary why the Chief Executive and the Secretary for Security have not made their best efforts to fight for the trial to take place in Hong Kong? Or do they simply clandestinely want the case to be tried in the Mainland and thus they have only made a written request?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as I have mentioned in part (b) of the main reply, at present, there is a co-operative arrangement between the police and the mainland public security authorities under which an administrative arrangement exists between both parties. That is to say, mainland public security authorities may, on the administrative level, surrender to us Hong Kong people who have absconded to the Mainland after committing an offence in Hong Kong, provided that the case fulfils three major principles, which are: firstly, the offender has to be a Hong Kong resident; secondly, the offence committed solely took place in Hong Kong; and thirdly, the Hong Kong offender has not violated any mainland law under which the Mainland can conduct investigation and proceed to trial.

With respect to this case, the message given to us from the Mainland is that they opined that while part of the offence committed by the suspects arrested had taken place in Hong Kong, that is, they murdered someone in Hong Kong, the preparations and planning of the murder took place in the Mainland. They are thus of the view that, according to the mainland laws, the suspects were arrested for violating mainland criminal law. Under our existing system, we have to respect the mainland laws and their enforcement. Thus, with respect to this point, it is not true that we have not made our best efforts to fight for the case and deliberately handed over the case to the relevant mainland authority for trial.

In fact, police investigation on the case is still ongoing. We hope that after the Mainland has completed the trial or investigation, the latter will be surrendered to the Hong Kong police for follow-up.

MR JAMES TO (in Cantonese): *President.*

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

MR JAMES TO (in Cantonese): *President, the Secretary has given many words of wisdom, but he has not answered why the Chief Executive and the Secretary for Security did not fight for the case.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think I already have. This is not a question of whether we have fought for it, but a question of mutual respect for each other's jurisdiction.

MR RONNY TONG (in Cantonese): *President, the Secretary, when expounding on the principles just now, seemed to have missed one point, that is, there is capital punishment, in particular for murder, in the Mainland while there is not in Hong Kong. If the suspects involved are Hong Kong people, should the Government not consider the fact that the Hong Kong people tried for murder in*

the Mainland instead of in Hong Kong may be sentenced to death and that they will not be sentenced to death if the case is tried in Hong Kong? I think that this is a major principle for consideration. Perhaps the Government can talk about its views on this?

SECRETARY FOR SECURITY (in Cantonese): Madam President, there are certainly differences in the laws of the two places. We thus urge, under the principle of "one country, two systems", Hong Kong people to comply with the local laws no matter they are in the Mainland or other jurisdictions. If they violate the local laws, they may be subjected to punishment and trial according to the local laws.

MR RONNY TONG (in Cantonese): *President, I am afraid the Secretary has misunderstood my supplementary question; perhaps I have not put it clearly. President, we are talking about a murder case which took place in Hong Kong. In fighting for the jurisdiction over this case, one of the important principles to consider is that given the murder case involved suspects who are Hong Kong people and it took place in Hong Kong, the Government should fight strongly with sound grounds for jurisdiction over this case so that the Hong Kong people concerned will not be subjected to capital punishment, should it not?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I hold that we also have to respect the principle of "one country, two systems". If the Mainland, in accordance with its law, holds that it has jurisdiction over a certain case, we have to respect that. At present, under "one country, two systems", some cases if tried in Hong Kong may receive a more lenient sentence, while some may receive a heavier sentence if tried in the Mainland; or *vice versa*. If we hold that under the current situation we have to fight for the right of trial in Hong Kong because we perceive that Hong Kong has a more lenient sentence for these types of cases, then, will we hand over the right of trial over a certain case to the Mainland if the sentence for that case is more lenient in the Mainland? I hold that we have to respect each other. Under "one country, two systems", we have to respect others' right of trial, jurisdiction and law enforcement.

MR RONNY TONG (in Cantonese): *He has not answered my supplementary question. I am talking about capital punishment, not other kinds of punishment.*

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

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think I have already answered the question. I have nothing to add.

MS MARGARET NG (in Cantonese): *President, it is mentioned in the last paragraph of part (a) of the main reply that the jurisdiction over the case is based on the ground that despite the case having taken place in Hong Kong, the Hong Kong people involved have committed the offence of "intentional homicide" under the Criminal Law of the People's Republic of China. May I ask whether every Hong Kong person, who has violated mainland criminal law despite his acts having taken place in Hong Kong, will be tried by the Mainland once he is in the country? For instance, in the case of CHING Cheong where all of his acts took place in Hong Kong, is it because he went to the Mainland that he could be tried by the Mainland according to its criminal law? If this is the case, Hong Kong is, in fact, implementing the mainland criminal law. I reckon that Hong Kong people are very concerned about this. Could the authorities clarify this point?*

PRESIDENT (in Cantonese): Which public officer will answer this supplementary question? Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Maybe let me tackle it first. If necessary, Secretary for Justice WONG Yan-lung can supplement my answer.

I think there is entirely no relevance between the murder case in Luk Yu Teahouse and the case of CHING Cheong, so I will not comment on the latter here. With respect to this murder case, the message from the Mainland is that although the act of murder took place in Hong Kong, the entire scheme of murder and many of the preparatory acts were plotted in the Mainland, including the appointment of the killers and the act of payment. Given that some of the

preparatory acts took place in the Mainland, according to the mainland criminal law, the Mainland has the jurisdiction over this case. This is entirely irrelevant to what Ms Margaret NG has said, concerning that the Mainland has the right to try any Hong Kong person who has committed an offence under its laws.

MS MARGARET NG (in Cantonese): *President, the Secretary has not answered my supplementary question. I asked the Secretary to clarify the principle on whether the Mainland shall have the right of trial of acts taken place in Hong Kong as long as the acts have violated mainland criminal law? With respect to this murder case, at least some preparatory acts took place in the Mainland; but in the case of CHING Cheong, no preparatory act was taken in the Mainland. I thus request the authorities to clarify the principle. Under what circumstances will the acts of Hong Kong people conducted in Hong Kong be tried in the Mainland?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I do not wish to be involved any further in the case of Mr CHING Cheong.

MS MARGARET NG (in Cantonese): *President, I am not asking about the case of CHING Cheong. I am only using it for illustration.....*

PRESIDENT (in Cantonese): You may sit down first. I was about to ask the Secretary for Justice whether he would wish to give a reply.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I think the Secretary for Security has basically answered this question, but as the President has asked me, I may perhaps expound on it a little further.

As to whether the acts of a Hong Kong resident conducted in Hong Kong, which are totally unrelated to the Mainland, will be subjected to mainland criminal law once the person enters the Mainland — just as what Ms Margaret NG has mentioned just now, I hold that it is not likely to happen. Take the case in question today as an example, it concerns purely mainland Courts, in

accordance with its law, considering they have jurisdiction over the case. In particular under mainland criminal law, when some of the preparatory criminal acts of a certain crime took place in the Mainland, the Mainland will have jurisdiction over the case. Actually, this is not restricted to the Mainland. The same is true for many other countries. I hold that the case in question will not turn into a situation as worrying as the one cited by Ms Margaret NG.

Madam President, another point about which I wish to say a little more is the situation where two places having concurrent jurisdiction, which occurs frequently and is not restricted only to between Hong Kong and the Mainland, but also with other countries. Perhaps let me briefly respond to what Mr TO has said just now. In fact, according to the practice of international law, under this situation, the mutual respect that the Secretary has mentioned just now is usually referred as "comity". The principle of comity has been upheld all along, which actually means to respect each other and it also carries the meaning of reciprocity. It is a little similar to "Do as you would be done by". If we do not want others to interfere with our jurisdiction, we will not do likewise. This is what I would like to add.

PRESIDENT (in Cantonese): We have spent more than 17 minutes on this question. Last supplementary question.

MR LEUNG KWOK-HUNG (in Cantonese): *Mr Ronny TONG was asking about capital punishment just now. Once capital punishment is executed, it is irreversible. This makes a big difference as it is a point of no return when one is beheaded. The Secretary has thus not answered his supplementary question. However, the supplementary question I would now like to ask the Secretary for Justice is: According to this principle, for example, if we have said in Hong Kong something violating the law on national security in the Mainland, and the remark concerned an incident happened in the Mainland and the remark was reiterated in the Mainland by others, or if my friend had said something violating the law on national security, would I be arrested by the mainland procuratorate authorities if I went to the Mainland for a tour? Because I planned the incident in Hong Kong. Could they do so? In other words, if I said something in Hong Kong which would not constitute an offence in Hong Kong, would you turn me*

over to the Mainland for trial for reasons of respect for other jurisdiction? I am referring to myself because I always make such remarks.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please stop talking about yourself. I will not allow this hypothetical question of yours, but I may allow you to put a question in relation to policy.

MR LEUNG KWOK-HUNG (in Cantonese): *Yes, on policy. Thank you, President.*

In terms of policy, in case a person, who has done something in Hong Kong which was regarded by the Mainland as a plan violating the law on national security in the Mainland, was arrested and then tried by the mainland procuratorate authorities — your way of saying it is arrest first and trial later, will you seek to extradite that person back to Hong Kong for trial? Because what that person has done does not constitute an offence in Hong Kong.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I need to stress that, as Members are also clearly aware, according to Article 18 and Annex III of the Basic Law, mainland criminal law does not apply in the Hong Kong SAR. The Mainland needs to have grounds before establishing its jurisdiction. As I have said just now, in case where evidence was established to prove that part of the acts of crime was conducted in the Mainland, the Mainland would thus have grounds to seek jurisdiction. We would then consider how to proceed when the situation turned into a concurrent jurisdiction. Without such a situation, we should rest assured that mainland criminal law will not apply in Hong Kong.

MR LEUNG KWOK-HUNG (in Cantonese): *President, he has not answered my supplementary question.*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, which part of your supplementary question has not been answered?

MR LEUNG KWOK-HUNG (in Cantonese): *What I was asking the Secretary is, if the Mainland held that an incident occurred in Hong Kong was planned by me — in other words, I did not do it in the Mainland — but I have a partner..... for example I now say that I want to end one-party dictatorship.....*

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, do not bring other matters into your supplementary question. Which part of your supplementary question has not been answered? Just repeat that part of the question will do.

MR LEUNG KWOK-HUNG (in Cantonese): *The part he has not answered is whether there is now such a platform? Because something now done in Hong Kong is considered unacceptable under the law on national security in the Mainland. Thus I would be arrested if I went to the Mainland. This would provide a platform because I planned the incident. Although I did not do it, would I be held liable if I have told others that I would do it? I am citing a counter-example of the existing case. Secretary, do you understand my question?*

PRESIDENT (in Cantonese): Please sit down first. If you do not sit down, I cannot ask the public officer to reply.

(Mr LEUNG Kwok-hung sat down)

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

SECRETARY FOR JUSTICE (in Cantonese): I do not have anything to add in relation to principle. As to the non-specific hypothetical question, it is difficult to provide a concrete answer.

PRESIDENT (in Cantonese): Fifth question.

Hospital Authority Drug Formulary

5. **DR YEUNG SUM** (in Cantonese): *Madam President, since July last year, the Hospital Authority (HA) has gradually implemented the Hospital Authority Drug Formulary (the Formulary) in public hospitals and clinics. Some drugs in the Formulary, including such expensive drugs as "Paclitaxel" for breast cancer and "Imatinib" for stomach cancer, have to be purchased by patients at their own expenses. In this connection, will the Government inform this Council:*

- (a) *whether it knows the HA's average annual expenditure on drugs for each patient since the implementation of the Formulary, and how the figure compares to those of the past;*
- (b) *whether, in each case where it has been clinically assessed by attending doctors that certain drugs should be prescribed for patients for appropriate treatment, the HA will consider requiring the patients concerned to pay the standard charges only and not the full costs of such drugs; and*
- (c) *whether the Government will consider setting up a committee, independent of the HA and comprising non-officials as well as representatives of the relevant professional bodies and patient groups, to regularly review the Formulary so as to avoid queries that the HA has, due to resource considerations, inappropriately classified drugs as patients' self-financed items or failed to include efficacious new drugs in the Formulary as standard-charge items?*

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

- (a) The Formulary was implemented in phases in the seven hospital clusters starting from July 2005 and was fully implemented in October the same year.

Before implementation of the Formulary, in the period from 1 July 2004 to 30 June 2005, the HA's average expenditure on drugs for in-patient service was HK\$83.4 per patient per day and that for non-inpatient services was HK\$89.1 per patient per

attendance. I wish to emphasize that the cost I mentioned is the cost of purchasing the drugs, not of administering the drugs. In other words, the cost of the professionals involved is not included. After implementation of the Formulary, from 1 July 2005 to 30 June 2006, the HA's average expenditure on drugs for in-patient service was HK\$83.7 per patient per day, while that for non-in-patient services had increased to HK\$92.8 per patient per attendance.

- (b) At present, there are over 1 300 drugs in the Formulary, including many expensive drugs, for treatment of various acute and chronic diseases. All these drugs have evidential support for their clinical efficacy, therapeutic effectiveness and cost-effectiveness. The Formulary contains two categories of drugs, namely General Drugs and Special Drugs. General Drugs refer to drugs with well-established indications and effectiveness which are available for general use as indicated by the patients' clinical conditions. This group comprises around 80% of the drugs in the Formulary. Special Drugs refer to drugs which are to be used under specified clinical conditions with specific specialist authorization. This group comprises around 20% of the drugs in the Formulary. Both the two aforesaid categories of drugs are currently provided by the HA at highly-subsidized rates and are included in the standard fees and charges of the HA's services.

In developing the Formulary, the HA had considered whether patients should be required to purchase certain drugs at their own expenses. One of the major guiding principles is that the HA, as a public organization, has responsibility to ensure that public resources are utilized in the most equitable and effective way. Due to limited resources, we should aim to deliver services that can best serve the interests of the community at large and provide services to the largest possible number of patients. Given the targeted subsidy principle and having considered the opportunity cost, some drugs that have proven to be of significant benefits to patients but extremely expensive are not included in the Formulary. Patients who require such expensive treatment and can afford to pay should pay for these drugs at their own expenses. That said, the HA will use the Samaritan Fund as a safety net to offer assistance, to ensure

that no one will be denied treatment because of lack of means. In addition, for drugs which only have preliminary medical evidence or marginal benefits or are for meeting the needs of individual lifestyle, patients will have to purchase them at their own expenses. Such an arrangement is considered to be more in line with the principle of equitable and rational use of public resources.

- (c) The evaluation and review of the list of drugs in the Formulary is a complicated decision-making process, which involves considerations from different perspectives such as science, medical ethics and clinical analysis, and so on; and requires in-depth and thorough discussions among the professionals. The HA has set up an internal expert team comprising clinical experts and pharmacologists from the HA and universities to review the list of drugs in the Formulary according to a set of explicit and comprehensive evaluation criteria. The set of criteria includes efficacy, safety, and cost effectiveness of the drugs *vis-a-vis* other viable alternatives, and overseas experience, and so on. In the course of evaluation, reference needs to be made to international medical literature, coupled with thorough analysis and proof, so as to ensure transparency and accountability of the review process. The HA is a statutory body established under the Hospital Authority Ordinance to manage the public hospitals in Hong Kong independently and is accountable to the Special Administrative Region (SAR) Government. The development and management of the Formulary is part of the HA's daily operation and should not be interfered with by other organizations or committees.

The review of the Formulary is an ongoing process. New drugs will have to be duly evaluated before they can be included in the Formulary. Similarly, drugs currently in the Formulary will also be reviewed from time to time to determine whether their continued inclusion is appropriate.

The HA has maintained close ties and dialogues with patient groups. Apart from the bimonthly sharing sessions, patients' views and concerns about the Formulary are also solicited through individual contact or other occasions. In fact, communication between the

HA and patient groups has been effective which enables the HA to understand better and more comprehensively the views of patient groups on the implementation of the Formulary. For instance, when the HA carried out its consultation on the Formulary last year, some patients urged the HA to enhance the transparency and objectivity of the assessment criteria of the Samaritan Fund. In the light of their views, the HA revised the assessment criteria of the Samaritan Fund with reference to those of the Supplementary Legal Aid Scheme. Under the revised criteria, the patients' disposable financial resources will be used to determine the amount of subsidy to be granted. The adoption of the new criteria is to ensure that patients' quality of life would be maintained largely even if they have to purchase the more costly drugs.

Since the implementation of the Formulary in July last year, the updated Formulary has been uploaded onto the HA homepage for public access. Members of the public can also give their views on the Formulary through the established consultation framework and channels. Through counselling on the use of drugs and drug education activities available at its hospitals and clinics, the HA provides counselling services for patients and strives to enhance their awareness of the efficacy and side effects of drugs. In reviewing the Formulary, the HA will ensure that the public views can be adequately reflected and welcome suggestions and monitoring by the public in an open and transparent manner.

DR YEUNG SUM (in Cantonese): *Madam President, in the long run, the HA's financial problem can be resolved through financing. I hope the Secretary can seriously examine the present situation. At present, many drugs for cancer treatment have to be purchased by patients at their own expenses. For instance, "Iressa", a drug for lung cancer, costs a patient \$450 per day, or \$13,500 per month. I feel that we should uphold the principle that life is priceless. We cannot let only the rich to purchase these cancer-treating drugs, whereas the poor are not supposed to do so. Although the problem with resources can be resolved by financing, should the Government adhere to this principle and classify these life-saving drugs as General Drugs?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I am not in the position to comment on the efficacy of individual drugs because I am no expert in that field. However, I think that the HA has analysed which drugs merit inclusion in the Formulary. As far as I understand it, there are at present 80 drugs for treating cancer, with 50 of them already included in the Formulary. In other words, patients are not required to pay extra fees for these drugs. As for the remaining 30 drugs, patients have to purchase them at their own expenses. Of these drugs, four are required to be paid by affordable patients. For patients who cannot afford the drugs, the Samaritan Fund will offer assistance according to their affordability.

DR YEUNG SUM (in Cantonese): *Madam President, the Secretary has not responded to the point I raised in the supplementary question concerning principle. Given that life is priceless, should drugs proven to be life-saving be classified as General Drugs? I believe this principle is very important.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we believe the HA has absolute authority to handle drugs which can truly save lives. If a certain drug can save life and the condition of a patient can really be saved only by the drug, the HA will strive to fight for the use of the drug.

DR JOSEPH LEE (in Cantonese): *We have recently received some complaints from patients about the Formulary. They have mainly complained that many of the drugs they used to take have to be replaced by other drugs subsequent to the implementation of the Formulary. I assume that the prices of the drugs are probably different. However, the patients have mainly complained that the side effects of the new drugs are entirely different. May I ask the Secretary whether the HA has figures showing the number of patients who have to switch to other drugs subsequent to the implementation of the Formulary? Furthermore, does the Government have figures relating to the number of patients who have to be hospitalized for treatment because of the side effects caused after switching to new drugs?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I do not have figures on the number of patients who have to switch to other drugs because of the implementation of the Formulary. However, many patients may need to switch to other drugs after a certain period of consultation. I believe it is very difficult to keep statistics on whether the switch of drugs is caused by changes in patients' conditions or implementation of the Formulary. Of course, some doctors have reflected that, owing to the implementation of the Formulary, they have to cease using some drugs they used to prescribe and prescribe drugs included in the Formulary instead. Nevertheless, the expert team has expressed the hope that the types of drugs with similar efficacy can be reduced for easy handling and cost-effectiveness. Generally speaking, the conditions of patients should be of vital importance. The switch of drugs should not produce a significant impact on the conditions of patients.

DR JOSEPH LEE (in Cantonese): *May I ask the Secretary to respond? This is because the Secretary has not answered my supplementary question. My main concern is that drugs with the same efficacy may differ in cost-effectiveness. Despite the same efficacy, different side-effects may be produced. Can the Secretary provide us with figures on this?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I would try my best to see if these figures can be provided, but I believe the figures will not be easy to obtain. (Appendix IV) I think the patients should inform their doctors if they encounter any problems after taking medication. After diagnosis, the doctors might switch back to those drugs with no side-effects. Therefore, it would not be easy to obtain statistics on this.

MS LI FUNG-YING (in Cantonese): *We can see clearly from the Secretary's main reply that the HA is wholly responsible for the formulation, implementation, monitoring and review of the Formulary. May I ask the Secretary whether it has occurred to him that conflicts and confusions will arise for an organ to play several roles? On monitoring, should representatives from patient groups be introduced for enhancement of fairness and transparency?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, first of all, I have to point out that the management of the HA, particularly in terms of governance, does not purely comprise a group of people. Members of the managing board are all people with representativeness, including representatives from patient groups, appointed by the Government. Therefore, we feel that the HA has extensively included the voices of society as a whole insofar as governance is concerned.

The mechanism governing the implementation of the Formulary is, so to speak, divided into a number of tiers. It is not that doctors can prescribe whatever drugs he wants. Generally speaking, if a doctor learns about a new drug, or he wishes to prescribe a certain drug, he has to make a request to the medical and drug committee of his host hospital, and his request will be submitted to the central committee of the HA. This committee comprises several tiers, with one being an advisory committee on drugs for setting standards for newly introduced drugs. Furthermore, there is a Drug Formulary Committee responsible for examining the desirability of including certain drugs in the Formulary. Each of these committees comprises people with different representativeness. Besides members of the HA, there are university academics and professionals as well. This is why many overseas countries and public health care organizations have regarded our mechanism as a role model.

I hope Members can understand that drug is no simple matter. Given the fast advancing technologies, new drugs are produced every day. We must put public funds and resources to good use to take care of all the people of Hong Kong. In this connection, an effective and credible mechanism must be put in place. The existing mechanism is able to achieve this purpose. Meanwhile, the HA will from time to time liaise with all relevant patient groups. Insofar as I am aware, they have communicated with more than 50 patient groups in formulating the Formulary. Every patient group has also raised its concerns on its own disease. Therefore, a lot of their opinions have been included in the existing Formulary.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary said earlier that a lot of the opinions of patient groups had been included. However, the most important piece of opinion concerning a drug considered to be excellent by many patient groups has been excluded. In its main reply, the Government still maintained that "some drugs that have proven to be of significant benefits to patients but*

extremely expensive are not included in the Formulary. Patients who require such expensive treatment and can afford to pay should pay for these drugs at their own expenses". In other words, some drugs have to be paid by patients at their own cost, even though some patient groups desperately hope that those drugs can be included in the Formulary.

President, I find it wrong in principle because the principle of universality has been violated. Some life-saving drugs cannot be provided for patients. Of course, President, I understand that assistance is offered through the Samaritan Fund. However, some people of the middle class are outside its scope of service. Despite their paying tax, they can still not benefit from universality. Actually, many people might barely be able to be qualified for the services provided by the Samaritan Fund. May I ask the Secretary what criteria are adopted by the Samaritan Fund? This is because the assets limit on certain drugs might reach \$200,000. If a patient applies for legal aid, he will be deemed exceeding the limit if his asset exceeds \$150,000. However, he might have depleted his assets within a year if he takes those expensive drugs. President, how does the Samaritan Fund draw a line to delineate its scope of service?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I understand it, the Samaritan Fund will make its decision depending on patients' monthly income or dispensable income, and their medication period, as it might differ from one procedure to another. The Samaritan Fund was established many years ago. We will examine its resources requirement on an annual basis, and funds will sometimes be injected. The use of the Fund will be closely monitored too. Generally speaking, insofar as the several types of subsidized drugs are concerned, if a patient is unable to purchase any of them for lack of means, assistance may be offered.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary has not answered my question in relation to the line. Perhaps he can provide a supplementary answer in writing to state clearly how the line is drawn.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): I could explain in detail to Legislative Council Members the mechanism of the Samaritan Fund. (Appendix V)

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

MISS CHAN YUEN-HAN (in Cantonese): *The Secretary stated earlier that patients who could not afford a certain drug might apply to the Samaritan Fund for assistance. Insofar as the chronic patients, such as breast cancer patients, I have encountered are concerned, they have to take certain drugs but they cannot do so probably because of their low income. If the Government considers that they may seek assistance from the Samaritan Fund to take the drugs, the public should be informed of such in government clinics. At present, many patients have to substitute drug T for drug A because the former is much cheaper. The Secretary stated that no one would be denied their drugs because of lack of means. May I ask how he can handle the matter properly? Although countless breast cancer patients hope to be eligible for drug A, they have been told that only patients threatened by relapses are eligible for the drug. May I ask what criterion is this? Every patient would like to take more expensive drugs. I hope the Secretary can answer this question.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I suppose patients would like to take effective, not expensive, drugs. I think it is not necessarily the case that only expensive drugs are effective. This is the key principle we adhere to in determining the Formulary.

I really cannot see what drug Miss CHAN Yuen-han was referring to earlier. Nevertheless, of the drugs subsidized by the Samaritan Fund, there is one specializing in breast cancer treatment and migration.

PRESIDENT (in Cantonese): Last oral question.

Street Performances

6. **MRS SELINA CHOW** (in Cantonese): *President, it is learnt that a street performer often played fire tricks in the Mongkok Pedestrian Zone, and whenever he performed, some policemen would come and jot down information about him or dissuade him from performing. The performer was even served a summons*

by the police for having caused nuisance in public places earlier but the charge was subsequently dropped by the Department of Justice. In this connection, will the Government inform this Council:

- (a) whether street performance or entertainment activities are in breach of the laws of Hong Kong;*
- (b) of the number of complaints received by the police about street performance, the general approach adopted by the police in handling such complaints, and the number of street performers prosecuted over the past three years; and*
- (c) whether it will consider co-ordinating its enforcement efforts to allow street performers to perform on the streets as long as they do not cause obstruction, so as to enhance the city characteristics of Hong Kong?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, at present, street performance *per se* is not subject to specific government regulation. For the case cited, the subject person was charged under section 4(23) of the Summary Offences Ordinance (Cap. 228) which deals with obstruction on the street. Under the section, anyone who "plays at any game or pastime to the annoyance of the inhabitants or passers-by; or plays at any game or loiters in any public place, so as to obstruct the same or create a noisy assembly therein" commits an offence. Whether there would be prosecution would depend on the specific circumstances of the case.

The answers to the three parts of the question are as follows:

- (a) There is no specific prohibition on street performance *per se* nor is there any definition of "street performers" or "street performances" in the Hong Kong statutes. However, street performers, like the public at large, are subject to the laws of Hong Kong, including, *inter alia*, prohibitions on nuisance, annoyance or obstruction in any public place to people and/or traffic; noise nuisance; and objectionable performances of an indecent, obscene, revolting or offensive nature.

- (b) The police have not kept records on the number of prosecutions against street performers for breaching offences under our criminal code or the number of complaints lodged against street performers for such breach.

Upon the receipt of any complaint against street performer or other persons, a police officer on patrol will normally be sent to the scene to investigate. He will first identify the complainant and other witness(es) to better understand the complaint. The police officer will record information of the person under complaint, the complainant and the witness(es).

In case breach of the law is established, the police will follow up with appropriate action, such as verbal warning to the person, or to take prosecution action under the relevant law.

- (c) It is our cultural policy objective to create an environment which is conducive to the freedom of artistic expression and creation, and the wider participation in cultural activities, including performances by street performers. The basic principle is that public safety must not be compromised and that there will be no nuisance or obstruction caused to the public.

The law enforcement agencies will only take enforcement action if the activity in question is in breach of the law.

MRS SELINA CHOW (in Cantonese): *Members may have seen often street performances in major cities worldwide, such as Sydney, San Francisco, New York, London and Tokyo, especially in pedestrian zones. According to the Secretary's main reply, it sounds as if this is also the case in Hong Kong but in fact, the performers here may be under great threats because if they are complained against, the police will intervene and they may also be liable to prosecution.*

May I ask the Secretary whether, from his point of view, especially with reference to part (c) of the main reply, he has considered how these performers can be allowed in an orderly manner to perform in our city in more secured

circumstances where they will not be subject to prosecution, thereby enhancing our characteristics as an international metropolis in Asia?

SECRETARY FOR HOME AFFAIRS (in Cantonese): In fact, as I have just said, it has been our cultural policy to encourage public participation and also creative or arts performances and activities. The existing arrangement in law has balanced the needs of performers or artists and those of the general public. Indeed, a balance has been struck between their interests. Meanwhile, the performers are not allowed to perform anywhere they like. In other countries, performers are allowed to perform on the street because the environment there is different or special arrangements have been made. We will consider the unique situation in Hong Kong and look into what conditions we have in Hong Kong to allow such performances.

But the basic principle is that public safety and order must be protected and such performances must not cause nuisance or obstruction to other people. The Leisure and Cultural Services Department (LCSD) is conducting a study in this regard. At venues under the LCSD, such as open spaces, parks, and so on, the LCSD has implemented a number of pioneer schemes to designate places for performers to perform. But these places are not open to all performers. Rather, some arrangements must be made and implemented in an orderly manner to ensure public safety, and so on. In Tuen Mun Park, for instance, some areas are already designated for open performances. Will we consider further extending this arrangement? Yes, we will consider it, especially as the District Councils (DCs) are conducting a review. We will enhance the participation of DCs in the management of some recreational and cultural facilities in the districts. This arrangement will be implemented next year with effect from 1 January 2007. Consideration can be given to four districts first, in order to identify ways to designate some places in the public area in the respective districts or at venues managed by the LCSD in the districts for street performers to perform freely.

As for the arrangements on roads, a consensus must also be reached in the DCs before any measure can be implemented.

MR WONG KWOK-HING (in Cantonese): *Although the Secretary said in the main reply that the Government would create an environment conducive to the freedom of artistic expression and creation and that the DCs would be*

responsible for implementing pioneer schemes next year, I wish to ask the Government this: Given that the DCs cover a total of 18 districts, each with different conditions, should the Government establish a dedicated body to help these performers give play to their artistic talent by allowing them to perform on the street or in certain areas or during certain periods after they have secured a licence and protection, which can also reinvigorate local culture and economy? Why does it not follow the practices adopted in foreign countries and set uniform requirements?

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, if Mr WONG's supplementary question was asking whether street performances would be regulated by a licensing system, certainly, from a cultural and arts angle, we will not introduce a licensing system to regulate any form of arts performance or artists, just as we will not impose regulation by way of licensing on any artist in conducting a particular kind of artistic activity. Nor will we impose regulation by way of licensing to decide who can be considered as artists. I believe the general public in Hong Kong support this position of the Government. However, how are we going to consider the designation of public venues for arts performances in the open area managed by the LCSD? As I said earlier, we will put in place a mechanism, such as the arts and crafts fair under the management of the LCSD, which involves an approving mechanism. Certainly, this approving mechanism ensures public order and public safety, so that street performances can be conducted systematically, rather than allowing everyone to perform anywhere and anytime. We hope that the performances can be conducted in an orderly manner. We will certainly make reference to the practices in other countries but in other countries, it is not the case that performers can perform anywhere they like after they have obtained a licence. Rather, they can only give specific performances at a specific time in a specific place. So, the performances must be conducted within a predetermined framework.

MR WONG KWOK-HING (in Cantonese): *President, the Secretary did not answer the part of my question about whether the SAR Government should establish a dedicated structure to provide support to a cultural economy. I did not ask anything about licensing.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I think if it is necessary to set up a dedicated mechanism, it must be a top-down mechanism. In this connection, it is best to consult the 18 DCs and if a consensus can be reached, we will take on board their views with an open mind.

MR DANIEL LAM (in Cantonese): *President, in many foreign places, a diversity of cultures is promoted, and street performances are also very common. May I ask the Secretary whether he will, by making use of the powers and functions of the DCs or conducting consultation in this respect more extensively, designate suitable sites for these performances of artistic expression on the principle that they do not cause obstruction on the street or nuisance to the public?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, as I said in my reply to a supplementary question earlier, we will certainly forge a partnership relationship with the DCs and listen to their opinions as far as possible. In fact, on this issue, we already visited two DCs two months ago to discuss it with them. One DC expressed divergent views, consisting of both supporting and dissenting views. Some people think that the streets in Hong Kong are very narrow with heavy pedestrian flow, and if pedestrian zones or performance zones were designated, what about the pedestrians? Certainly, DC members know best the characteristics of their districts and the needs of the residents. So, we must heed their views.

MISS CHOY SO-YUK (in Cantonese): *President, Mr WONG Kwok-hing said earlier that his question was not about licensing matters, but I am going to ask about licensing now. The Secretary mentioned foreign countries earlier, such as Singapore and Taiwan where the street performers — I do not mean the general type of artists who mostly perform indoor, and we have no objection to not issuing licences to them, but if the street performers can perform only in some specific places at a specific time, and if the authorities can issue licences to them, they can give performances on the street openly in a legitimate manner. May I ask the Secretary whether the Government will issue licences to these performers?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): The Government has actually done half of the job. Why do I say so? In places under the management of the LCSD, such as open spaces, parks or the public square outside the Hong Kong Cultural Centre, the Government has already made this arrangement. We do not issue licences for the performances. Rather, artists who wish to give performances in a particular place are required to submit an application. In response to an application, the LCSD will sign a contract or agreement with the artist. But it is not a licence, but permission for conduct of certain arts activities at a particular time or in a particular place. This is viable for places under the LCSD. But what about public places? What about places such as the streets, alleys or pedestrian precincts? Certainly, in this regard, they are already under regulated by law but at the end of the day, it is still necessary to consult the DCs. We have a characteristic and that is, if a DC considers that a special performance zone should be designated in a particular pedestrian precinct or on a particular road, we will make other arrangements for it and co-ordinate the needs in this respect.

MISS CHOY SO-YUK (in Cantonese): *President, the Secretary did not tell us whether the authorities would issue licences.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): I have answered this point already. Under such circumstances, we will not introduce a licensing system, but suitable arrangements can be made.

DR KWOK KA-KI (in Cantonese): *Madam President, the Secretary has attended an Asian cultural conference recently, and I believe we very much hope to see a good cultural environment in Hong Kong featuring, among other things, street performances. But the Secretary's reply gave me an impression that the Government is very passive, because the cultural objectives are within the remit of the Secretary and there is room for more achievements to be made. The Secretary said earlier that four DCs would have to discuss this. As we all know, it will take quite a long time to implement the reform of DCs. Will the Secretary tell us whether we must wait until the completion of all the reforms of DCs before he will deal with the policy on street performances? If so, I would be extremely disappointed.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): In fact, what the DCs will have to discuss is the designation of certain areas for these arts performances. At present, anyone can give such arts performances in public venues, provided that he does not breach the laws of Hong Kong. Under the laws of Hong Kong, any person conducting any activity must not cause nuisance to other inhabitants or citizens, and there must not be acts or facilities which are detrimental to public safety, and they must not create obstruction. These provisions in law already protect the freedom of artistic expression and the freedom to arts appreciation. This is the freedom of the mass public.

DR KWOK KA-KI (in Cantonese): *Madam President, the Secretary did not answer my supplementary question. My question was very clear. If the Government wishes to implement a new policy, say, a policy to encourage street performances, does it have to wait until the completion of the reform of DCs? I would like the Secretary to tell us whether we must wait till then.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): I already gave an answer earlier. No, that is unnecessary. Under the existing law, they are already allowed as long as they meet the other requirements that I have just mentioned, and that would be enough.

MR HOWARD YOUNG (in Cantonese): *President, from the angle of tourism, it is a good thing to have street performances or entertainment activities. I have seen these activities in Europe and Australia. I also welcome the police taking a rather tolerant attitude towards these activities. I would like to ask the Secretary this: If licensing will not be considered, has he conducted any study and consultation? As far as I remember, there are also street performances inside the subway stations in London, and in my impression, these activities are regulated by a certain institution or by issuing permits or licences. Moreover, similar activities can be found in Paris and in Soho, London. Has the Secretary made enquires about how these activities are handled in other countries?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): I have looked up the handling approach adopted in other places. They do not use a licensing system

either. We all have a general understanding of a licensing system. In fact, what they would do is to sign contracts, but an application or even an audition, that is, a trial performance is also required. After the performance is examined and approved by the authorities concerned, a contract will be signed to stipulate that the specified performance shall be given at a specific time and in a specific place. They do it by way of a contract, inviting artists to give performances in the districts. There are similar requirements or arrangements for performances inside the subway stations in London, Paris and even New York or in other public places.

PRESIDENT (in Cantonese): We have spent more than 17 minutes on this question. Last supplementary question.

MR TOMMY CHEUNG (in Cantonese): *President, the Secretary said earlier that he would make these arrangements in his places or places that belong to the Government and consult the DCs on which streets where such arrangements are considered feasible. In fact, I would like to ask the Secretary a very simple question. I think these are policy issues, and the Secretary must deal with them proactively. Will the Secretary take on a leading role insofar as this policy is concerned by opening up the streets for people to conduct these activities? I believe, if the Secretary can proactively indicate to the DCs that this is feasible, it will be more effective than waiting for the DCs to tell the Government which streets are suitable for these arrangements. So, may I ask the Secretary whether he will assume a leading or guiding role insofar as this issue is concerned?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, as I have already said, before answering this question here, we already visited two DCs and consulted their views. We will consult all the DCs and this policy can be implemented only when it has popular support. Thank you, President.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Government Vehicle Fleet**

7. **MS AUDREY EU** (in Chinese): *President, regarding the statistics on the Government's vehicle fleet and the progress in switching to hybrid vehicles, will the Government inform this Council:*

- (a) *using the following table, of the numbers of various vehicles in the Government fleet at present; and*

	<i>Pre-Euro (no. of vehicles)</i>	<i>Euro I (no. of vehicles)</i>	<i>Euro II (no. of vehicles)</i>	<i>Euro III (no. of vehicles)</i>	<i>Euro IV (no. of vehicles)</i>	<i>Hybrid vehicles (no. of vehicles)</i>
<i>Specialized vehicles</i>						
<i>Buses</i>						
<i>Goods vehicles</i>						
<i>Ambulances</i>						
<i>Vans</i>						
<i>Motorcycles</i>						
<i>Small saloon cars (1 500 cc or below)</i>						
<i>Medium saloon cars</i>						
<i>Limousines</i>						
<i>Others</i>						

- (b) *whether it has set a target and timetable for replacing government vehicles gradually with hybrid vehicles or other vehicles of lower emission levels, so as to encourage private car owners to switch to more environmentally-friendly vehicles, if it has, of the target and timetable; if not, the reasons for that?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in the absence of Secretary for the Environment, Transport and Works) (in Chinese): *President,*

- (a) The current number of various types of vehicles in the government fleet are listed in the Annex.

- (b) The Government is consulting the trades and the Legislative Council on the emission and fuel efficiency performance standards specified in the tax concession proposal. As the standards have yet to be finalized and the market of environment-friendly vehicles is still under development, it is not yet possible to set a specific timetable for replacing government vehicles with environment-friendly vehicles at this stage. Upon completing the consultation and finalizing the standards, the Government will give priority to vehicles complying with specified environmental standards when government vehicles are due for replacement each year, subject to operational requirements and the rational utilization of resources.

Annex

Number of Government Vehicles

	<i>Pre-Euro</i> (no. of vehicles)	<i>Euro I</i> (no. of vehicles)	<i>Euro II</i> (no. of vehicles)	<i>Euro III</i> (no. of vehicles)	<i>Euro IV</i> (no. of vehicles)	<i>Hybrid</i> <i>vehicles</i> (no. of vehicles)
Specialized vehicles	8	91	182	151		
Buses		95	247	126		
Goods vehicles		18	166	235		
Ambulances		69	113	84		
Vans		511	912	1 108		
Motorcycles		1 086				
Small saloon cars (1 500 cc or below)		8	127	83	53	8
Medium saloon cars		12	325	261		
Large saloon cars		27	50	24	62	
Others*		12	72	115	19	1**

* Including cross-country vehicles and seven-seater multi-purpose cars

** seven-seater multi-purpose car

Regulation of Colon Hydrotherapy

8. **MR LI KWOK-YING** (in Chinese): *President, it has been reported that colon hydrotherapy, which has become increasingly popular in recent years, is*

claimed to be effective for detoxification, body trimming and disease prevention. However, according to the medical profession, there is a lack of scientific and medical proof to support the claim. Moreover, recently there was a case in which the consumer concerned had contracted diseases after receiving such therapy. In this connection, will the Government inform this Council:

- (a) whether the Department of Health (DH) has received a complaint from the abovementioned consumer who had contracted diseases after undergoing colon hydrotherapy; if it has, of the date on which the complaint was received, the follow-up action and whether the sectors concerned and consumers have been notified of the case; if so, of the arrangements for making such notification; if not, the reasons for that;*
- (b) given that the public is increasingly concerned about the problems arising from the improper use of medical devices such as those mentioned above, and the Administration has undertaken to expedite the conversion of the voluntary Medical Device Administrative Control System into a statutory registration system, whether it will consider amending the existing legislation to strengthen the regulation of medical devices during the transitional period; and*
- (c) whether it has considered how a balance between the impact of regulating medical devices on the development of the relevant sectors and the protection of consumers' interests can be struck; if so, of the results of its consideration?*

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

- (a) In early November 2005, the DH received a complaint involving a colon hydrotherapy centre referred by the Hong Kong Doctors Union. The DH then referred the complaint to the police for follow-up action. After investigation, the police found no evidence of illegal medical practice by the colon hydrotherapy centre and no evidence to substantiate the complainant's allegation. Generally speaking, if evidence shows that a complaint is of public health significance, the DH will publicize the matter. In this case,

however, since there was no evidence to prove that the infection was related to colon hydrotherapy, the DH did not notify the trade or the public.

- (b) At present there is no legislation in respect of the regulation of medical devices. A new ordinance needs to be enacted before any statutory regulatory framework can be put in place. As set out in the 2006-2007 policy agenda, we shall consult stakeholders on the statutory framework in respect of regulating medical devices in the coming year.
- (c) The purpose of regulating medical devices is to safeguard the health and safety of patients, device operators and the public. At the same time, we also need to ensure our continued access to new technologies and maintain a good business environment. Before drafting the legislation, we will conduct a regulatory impact assessment on the regulation of medical devices.

Assistance for Handicapped Students

9. **MR LEUNG KWOK-HUNG** (in Chinese): *President, in seeking assistance from me, parents of children with Down's Syndrome and handicapped children who go to mainstream schools have pointed out that both the Government and the schools have not provided them and their children with appropriate support. There are even restrictions that discourage them or carers from taking care of their children at school. In this connection, will the Government inform this Council of:*

- (a) *the numbers of children with Down's Syndrome and handicapped children in Hong Kong at present, as well as the respective numbers and age distribution of such children going to mainstream schools and special schools;*
- (b) *the number of complaints received by the authorities about such children being bullied and discriminated against in mainstream schools in each of the past three years; whether schools are required to report such cases to the Government, and whether schools are*

provided with guidelines for handling such cases; if so, of the details of the guidelines; and

- (c) *the financial support currently provided by the authorities for such children who study in mainstream schools; whether it will consider requesting schools to allow parents and carers of these children to take care of them at school to help them overcome learning difficulties and minimize cases of them being bullied and discriminated against by their peers; if not, of the reasons for that?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese):
President,

- (a) Down's Syndrome is a cause of intellectual disability. All along, children with Down's Syndrome are put under the category of intellectual disability and no separate figure has been kept particularly for these children. Based on the enrolment figures in September 2006, the distribution of children with disability (that is, intellectual disability, hearing impairment, visual impairment or physical disability) in public sector schools is as follows:

Type	Primary (normally six to 11 years old)		Secondary (normally 12 years old or above)	
	Special schools	Mainstream schools	Special schools	Mainstream schools
Intellectual Disability	2 222	554	2 932	451
Hearing Impairment	59	374	187	443
Visual Impairment	89	46	67	54
Physical Disability	360	97	444	38

- (b) The Education and Manpower Bureau (the Bureau) conducts a survey annually to collect from mainstream schools the information on discipline and guidance (including bullying) cases. Schools

were not required to indicate whether the cases involved students with special educational needs in the past surveys. Starting from the 2005-2006 school year, the Bureau has requested schools to specifically indicate whether the victim is a student with special educational needs when a bullying case is reported in the survey. The data collection and processing of the 2005-2006 survey is in progress.

In December 2005, the Bureau conducted a special survey on those primary and secondary schools which had reported bullying (physical) cases in the 2004-2005 survey in order to further study the nature of these cases, including whether students with special educational needs were involved. Four schools reported that the victims were students with special educational needs, involving a total of five students (four secondary and one primary). The survey did not capture breakdown figures on the types of special educational needs.

As regards complaint cases about discrimination against students with special educational needs in mainstream schools, only one complaint was received by the Bureau in the past three years. After investigation, it was found that the complaint was basically due to the parent having different views from the school on the support arrangement of his/her child in the school.

The Bureau adopts a "Zero Tolerance" policy on school bullying. A circular is issued annually to remind schools to adopt positive measures to ensure that students are safe at school. The Bureau has also provided guidelines to schools on the prevention and handling of bullying cases — a resource package entitled "Co-creating a Harmonious School" was developed in 2004 to enhance teachers' awareness and knowledge of bullying at school and the skills to prevent it and intervene; and a pamphlet for parents on "Help Your Child Develop a Harmonious Relationship in School" was also published in 2004 to promote harmonious relationships at school. The resource package and pamphlet were distributed to all primary and secondary schools and had been uploaded onto the Bureau website.

To enhance school personnel's capability in managing the related problems, the Bureau has also organized Certificate Courses on guidance and discipline, workshops, seminars and district networking for teachers as well as school guidance and discipline personnel. These activities cover topics such as "Prevention and strategies in managing school bullying", "Ways in dealing with students' emotional and behavioral difficulties" and "How to collaborate with parents and police in handling school violence".

On discrimination against disability, the Bureau issued the Bureau Circular No. 33/2003 in December 2003 to remind schools to observe the principle of equal opportunities and comply with the anti-discrimination ordinances. The Bureau has also uploaded some common examples and reference materials on adopting the principle of equal opportunities in school administration onto the Bureau website. In addition, the Equal Opportunities Commission (EOC) has issued a Code of Practice on Education in accordance with the Disability Discrimination Ordinance. Schools may browse the EOC website to have a better understanding of the frequently encountered problems and important cases.

- (c) Under the existing arrangements, should students need financial assistance, their parents may apply to the Student Financial Assistance Agency for school fee remission or financial assistance under the School Textbook Assistance Scheme or the Student Travel Subsidy Scheme. The Bureau is committed to implementing integrated education and providing adequate education opportunities for students with diverse learning needs to help them develop their potentials. Schools admitting students with special educational needs are provided with extra resources and manpower so that they may employ additional teachers and support staff. Professional support in the form of on-site services on assessment and advice from specialists (including educational psychologists and speech therapists), school-based teacher development, networking support from special schools, development of learning resources and experience sharing is also provided for schools so as to help them adopt the whole school approach in catering for students with special educational needs.

In principle, parents' support and involvement would facilitate the integration of children into their schools and help enhance their learning effectiveness. We consider that parents accompanying their children with special educational needs to attend school may not necessarily be an effective way to provide educational support. However, we encourage parents to communicate with the school so as to work out the most appropriate arrangement for their children, taking into account the children's individual needs.

Retired Civil Servants

10. **MR ALBERT HO** (in Chinese): *President, will the Government inform this Council of:*

- (a) *the respective numbers of civil servants at or above Master Pay Scale (MPS) Point 30 or at directorate level in bureaux and government departments who retired in 2004, 2005 and the first half of 2006, with a breakdown by bureaux and departments;*
- (b) *the number of cases in which the abovementioned retired civil servants at or above MPS Point 30 applied for taking up employment within two years from their retirement, with a breakdown by bureaux and departments, and the number of such cases approved, with a breakdown by the nature of work involved in the approved cases as follows:*

<i>Nature of work involved in the approved cases</i>		<i>Cases</i>	
<i>General classification of sectors</i>	<i>Post</i>	<i>Number</i>	<i>Sub-total</i>
<i>Full-time remunerated employment of a commercial nature</i>			
<i>Example: Commerce and trade</i>			
.....			
<i>Part-time remunerated employment of a commercial nature</i>			
<i>Example: Commerce and trade</i>			
.....			

<i>Nature of work involved in the approved cases</i>		<i>Cases</i>	
<i>General classification of sectors</i>	<i>Post</i>	<i>Number</i>	<i>Sub-total</i>
<i>Full-time remunerated employment of a non-commercial nature</i>			
<i>Example: Medical</i>			
.....			
<i>Part-time remunerated employment of a non-commercial nature</i>			
<i>Example: Education</i>			
.....			
<i>Honorary appointments or unremunerated service</i>			
<i>Example: Charity</i>			
.....			
<i>Total</i>			

- (c) *the number of cases in which the abovementioned retired directorate civil servants applied for taking up employment within three years from their retirement, with a breakdown by bureaux and departments, and the number of such cases approved, with a breakdown by the nature of work involved in the approved cases as follows; and*

<i>Nature of work involved in the approved cases</i>		<i>Cases</i>	
<i>General classification of sectors</i>	<i>Post</i>	<i>Number</i>	<i>Sub-total</i>
<i>Full-time remunerated employment of a commercial nature</i>			
<i>Example: Commerce and trade</i>			
.....			
<i>Part-time remunerated employment of a commercial nature</i>			
<i>Example: Commerce and trade</i>			
.....			
<i>Full-time remunerated employment of a non-commercial nature</i>			
<i>Example: Medical</i>			
.....			

<i>Nature of work involved in the approved cases</i>		<i>Cases</i>	
<i>General classification of sectors</i>	<i>Post</i>	<i>Number</i>	<i>Sub-total</i>
<i>Part-time remunerated employment of a non-commercial nature</i>			
<i>Example: Education</i>			
.....			
<i>Honorary appointments or unremunerated service</i>			
<i>Example: Charity</i>			
.....			
<i>Total</i>			

- (d) *the number of cases in which the retired civil servants mentioned in (a) above applied for post-retirement employment but were rejected as well as the reasons for rejection, with a breakdown by bureaux and government departments as well as salary scales (at or above MPS 30 or at directorate level)?*

PERMANENT SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for the Civil Service) (in Chinese): President, under existing policy, all retired civil servants who wish to take up outside work (the principal part of which is carried out in Hong Kong) during their final leave period and/or within a specified control period from their retirement have to apply for prior permission. The control period is three years for officers remunerated at Directorate Pay Scale (DPS) Point 8 or equivalent and two years for other officers. Blanket permission is however given to officers remunerated on the Model Scale 1 Pay Scale to take up post-service outside work. Effective from 1 January 2006, all officers are also given blanket permission to take up unremunerated work with specified non-commercial organizations which include (a) charitable, academic or other non-profit-making organizations not primarily engaged in commercial operations; (b) non-commercial regional/international organizations; and (c) the Central Authorities.

The Head of Department (HoD)/Head of Grade (HoG) is the approving authority for post-service outside work for non-directorate officers. Applications from directorate officers are approved by the Civil Service Bureau and will be submitted to an independent Advisory Committee on Post-service Employment of Civil Servants (Advisory Committee) for advice. The Advisory

Committee publishes an annual report on its work, which provides an overview of post-service outside work applications handled in the year. A copy of the report is issued to the Legislative Council Panel on Public Service for reference each year.

The requested information is set out as follows:

- (a) In compiling civil service personnel statistics, it is our practice to classify civil servants according to different salary groups. We do not maintain statistics on civil servants at or above MPS Point 30 as a group. Instead, there are salary groups of MPS Point 34 to 44 and MPS Point 45 to 49, who are middle management/professional officers and senior management/senior professional officers respectively. As such, we can only provide the numbers of civil servants by bureaux/departments who retired from the service between 1 January 2004 and 30 June 2006, and whose ranks are within MPS Point 34 to 49 or DPS, or equivalent. Details are at Annex A.
- (b) As applications for post-service outside work from non-directorate officers are approved by the respective bureaux and departments, the Civil Service Bureau does not have ready details of such applications. In view of the limited time available and the substantial number of applications involved, we are not able to provide the detailed information relating to non-directorate officers as requested. We have however gathered from bureaux/departments the numbers of applications received/approved/rejected in respect of officers who retired between 1 January 2004 and the first half of 2006, and whose salary falls within MPS Point 34 to 49 or equivalent. The detailed information is set out in Annex B.
- (c) Applications from directorate officers are centrally approved by the Civil Service Bureau, and the requested information is now compiled and set out in Annex C.
- (d) The policy and arrangement governing post-service outside work are clearly set out in the Civil Service Regulations and relevant circulars. Civil servants are generally well aware of the approving criteria, and the need to avoid any real or perceived conflict of

interest in taking up post-service outside work. Hence, they will unlikely apply for outside work which may cause real or perceived conflict of interest. Of the officers at MPS Point 34 to 49 or equivalent and directorate officers who retired between 1 January 2004 and 30 June 2006, seven applications for post-retirement outside work were rejected as at 30 September 2006 on grounds that the proposed work may give rise to real or perceived conflict of interest. A table showing the seven rejected applications is at Annex D.

Annex A

Number of officers by bureaux/departments
who retired between 1 January 2004 and 30 June 2006

<i>Bureau/ Department</i>	<i>1 January 2004 to 31 December 2004</i>		<i>1 January 2005 to 31 December 2005</i>		<i>1 January 2006 to 30 June 2006</i>		<i>B/D Total</i>
	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	
Agriculture, Fisheries and Conservation Department	3	0	0	1	1	1	6
Architectural Services Department	24	4	15	0	7	2	52
Audit Commission	4	0	0	0	0	0	4
Auxiliary Medical Service	0	0	1	0	0	0	1
Beijing Office	0	1	0	0	0	0	1
Buildings Department	8	4	5	0	1	2	20
Census and Statistics Department	2	0	4	0	1	0	7
Civil Aid Service	0	0	0	0	1	0	1
Civil Aviation Department	3	0	4	1	1	0	9
Civil Engineering and Development Department	8	4	10	3	3	1	29
Civil Service Bureau	26	6	11	4	3	1	51
Commerce, Industry and Technology Bureau	4	0	0	3	0	0	7

<i>Bureau/ Department</i>	<i>1 January 2004 to 31 December 2004</i>		<i>1 January 2005 to 31 December 2005</i>		<i>1 January 2006 to 30 June 2006</i>		<i>B/D Total</i>
	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	
Companies Registry	1	0	1	0	0	0	2
Correctional Services Department	19	0	20	2	11	1	53
Customs and Excise Department	8	1	12	0	7	1	29
Department of Health	39	4	12	4	6	1	66
Department of Justice	4	2	7	2	1	1	17
Drainage Services Department	13	1	4	2	0	0	20
Economic Development and Labour Bureau	1	0	0	1	0	0	2
Education and Manpower Bureau	117	2	44	1	10	1	175
Electrical and Mechanical Services Department	16	1	5	3	4	1	30
Environment, Transport and Works Bureau	3	1	2	1	0	1	8
Environmental Protection Department	6	2	5	2	0	0	15
Financial Services and the Treasury Bureau	4	1	2	1	0	0	8
Fire Services Department	29	1	25	4	8	1	68
Food and Environmental Hygiene Department	19	1	36	0	2	0	58
Government Flying Service	4	0	1	0	1	1	7
Government Laboratory	12	2	1	0	1	1	17
Government Logistics Department	9	1	1	1	0	0	12
Government Property Agency	3	0	3	0	1	0	7

<i>Bureau/ Department</i>	<i>1 January 2004 to 31 December 2004</i>		<i>1 January 2005 to 31 December 2005</i>		<i>1 January 2006 to 30 June 2006</i>		<i>B/D Total</i>
	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	
Health, Welfare and Food Bureau	0	0	0	1	0	0	1
Highways Department	9	2	6	1	6	2	26
Home Affairs Bureau	2	1	3	0	0	0	6
Home Affairs Department	17	1	8	3	4	0	33
Hong Kong Observatory	5	1	0	0	1	0	7
Hong Kong Police Force	62	6	59	8	43	3	181
Hongkong Post	2	1	1	2	0	0	6
Housing Department	38	4	37	6	7	1	93
Housing, Planning and Lands Bureau	2	0	2	0	0	0	4
Immigration Department	26	2	19	3	9	0	59
Independent Police Complaints Council	0	0	1	0	1	1	3
Information Services Department	16	1	2	1	3	0	23
Inland Revenue Department	30	3	13	2	3	3	54
Innovation and Technology Commission	3	2	0	0	0	0	5
Intellectual Property Department	4	0	0	0	0	0	4
Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	0	0	0	1	0	0	1
Judiciary	26	1	8	0	2	0	37
Labour Department	15	3	11	2	1	0	32
Land Registry	1	0	2	0	0	1	4
Lands Department	40	5	17	2	13	1	78
Legal Aid Department	4	1	0	2	1	0	8

<i>Bureau/ Department</i>	<i>1 January 2004 to 31 December 2004</i>		<i>1 January 2005 to 31 December 2005</i>		<i>1 January 2006 to 30 June 2006</i>		<i>B/D Total</i>
	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	
Leisure and Cultural Services Department	12	2	10	2	8	0	34
Marine Department	5	3	9	0	2	0	19
Office of the Government Chief Information Officer	12	1	1	1	0	0	15
Office of the Telecommunications Authority	9	0	2	0	1	1	13
Offices of the Chief Secretary for Administration and the Financial Secretary	3	1	4	1	2	0	11
Official Receiver's Office	4	0	0	1	0	0	5
Planning Department	8	2	3	2	0	0	15
Public Service Commission	0	0	0	0	1	0	1
Radio Television Hong Kong	6	0	3	1	1	0	11
Rating and Valuation Department	6	1	8	1	1	1	18
Security Bureau	1	0	0	1	0	0	2
Social Welfare Department	12	1	8	1	6	1	29
Student Financial Assistance Agency	2	1	0	0	0	0	3
Trade and Industry Department	1	0	0	0	0	0	1
Transport Department	5	1	3	0	0	0	9
Treasury	4	3	1	0	0	0	8
Water Supplies Department	17	3	5	1	2	0	28
Sub Total	798	92	477	82	188	32	1 669

<i>Civil servants working in public bodies</i>	<i>1 January 2004 to 31 December 2004</i>		<i>1 January 2005 to 31 December 2005</i>		<i>1 January 2006 to 30 June 2006</i>		<i>Total</i>
	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	<i>Officers at MPS 34 to 49¹</i>	<i>Officers at DPS²</i>	
Hong Kong Monetary Authority	10	1	3	0	0	0	14
Hospital Authority	79	2	26	0	9	0	116
Office of The Ombudsman	0	1	0	0	0	0	1
Sub Total	89	4	29	0	9	0	131
Total	887	96	506	82	197	32	1 800

Note: 1: MPS 34 to 49 means Master Pay Scale Point 34 to 49, or equivalent

2: DPS means Directorate Pay Scale, or equivalent

Annex B

Applications for Post-retirement Outside Work processed in respect of Officers at MPS 34 to 49 or equivalent who retired between 1 January 2004 and 30 June 2006

<i>Bureau/Department</i>	<i>Number of Applications¹</i>	<i>Number of Approved Cases</i>	<i>Number of Rejected Cases</i>
Architectural Services Department	15	15	0
Buildings Department	5	5	0
Census and Statistics Department	1	1	0
Civil Engineering and Development Department	3	3	0
Civil Service Bureau	188 ²	186 ²	2
Companies Registry	1	1	0
Correctional Services Department	15	15	0
Customs and Excise Department	2	2	0
Department of Health	115	115	0
Department of Justice	7	7	0
Drainage Services Department	4	4	0
Education and Manpower Bureau	273	271	2
Electrical and Mechanical Services Department	3	3	0
Environmental Protection Department	16	16	0
Fire Services Department	16	16	0
Food and Environmental Hygiene Department	17	17	0
Government Flying Service	1	1	0

<i>Bureau/Department</i>	<i>Number of Applications¹</i>	<i>Number of Approved Cases</i>	<i>Number of Rejected Cases</i>
Government Laboratory	7	7	0
Highways Department	15	15	0
Home Affairs Department	11	11	0
Hong Kong Observatory	1	1	0
Hong Kong Police Force	23	23	0
Housing Department	39	39	0
Immigration Department	25	25	0
Information Services Department	9	9	0
Inland Revenue Department	22	22	0
Intellectual Property Department	4	4	0
Judiciary	10	10	0
Labour Department	9	9	0
Land Registry	1	1	0
Lands Department	9	9	0
Legal Aid Department	10	10	0
Leisure and Cultural Services Department	35	35	0
Marine Department	4	4	0
Offices of the Chief Secretary for Administration and the Financial Secretary	3	3	0
Office of the Government Chief Information Officer	1	1	0
Office of the Telecommunications Authority	2	2	0
Planning Department	2	2	0
Radio Television Hong Kong	23	23	0
Social Welfare Department	6	6	0
Treasury	10	10	0
Water Supplies Department	2	2	0
Sub Total:	965	961	4

<i>Civil servants working in public bodies</i>	<i>Number of Applications¹</i>	<i>Number of Approved Cases</i>	<i>Number of Rejected Cases</i>
Hong Kong Monetary Authority	5	5	0
Sub Total:	5	5	0
Total:	970	966	4

1 A retiree may submit more than one application.

2 Of the 188 applications received, 186 applications were approved, including 139 paid part-time interpretation jobs of short duration and two unpaid jobs with non-profit-making organization taken up by the same retiree.

Annex C

Applications for Post-retirement Outside Work approved in respect of Directorate Officers who retired between 1 January 2004 and 30 June 2006

(A) Paid Full-time Commercial Appointments

<i>Nature of Approved Outside Work</i>		<i>Bureau/Department</i>	<i>Number of Cases¹</i>
<i>Sector</i>	<i>Post</i>		
Commerce/Finance	Consultancy/ advisory service	Commerce, Industry and Technology Bureau	1
		Hong Kong Police Force	1
		Inland Revenue Department	2
	Corporate management	Civil Aviation Department	1
		Hong Kong Police Force	4
		Housing Department	1
		Social Welfare Department	2
	General administration	Government Logistics Department	1
Home Affairs Department		1	
Construction/ Engineering/Works	Consultancy/ advisory service	Water Supplies Department	1
		Lands Department	2
	Corporate management	Planning Department	1
		General administration	Information Services Department
Legal service	Legal practice	Department of Justice	3
		Hong Kong Police Force	1
Medical service	Clinical service	Department of Health	1
Security service	Security management	Correctional Services Department	1
		Hong Kong Police Force	3
Total:			28

1 A retiree may submit more than one application.

(B) Paid Part-time Commercial Appointments

<i>Nature of Approved Outside Work</i>		<i>Bureau/Department</i>	<i>Number of Cases¹</i>
<i>Sector</i>	<i>Post</i>		
Commerce/Finance	Consultancy/ advisory service	Home Affairs Department	1
		Inland Revenue Department	2
		Lands Department	1

<i>Nature of Approved Outside Work</i>		<i>Bureau/Department</i>	<i>Number of Cases¹</i>
<i>Sector</i>	<i>Post</i>		
	Corporate management	Civil Aviation Department	3
		Commerce, Industry and Technology Bureau	1
		Customs and Excise Department	2
		Hong Kong Police Force	2
		Inland Revenue Department	1
		Labour Department	1
	General administration	Civil Service Bureau	2
Construction/ Engineering/Works	Consultancy/ advisory service	Electrical and Mechanical Services Department	1
		Lands Department	1
	Corporate management	Civil Aviation Department	1
		Civil Engineering and Development Department	3
		Environmental Protection Department	1
		Housing Department	1
	Medical service	Consultancy/ advisory service	Department of Health
Clinical service		Department of Health	4
Others	Teaching	Inland Revenue Department	1
	Translation	Transport Department	2
Total:			32

1 A retiree may submit more than one application.

(C) Paid Full-time Non-commercial Appointments

<i>Nature of Approved Outside Work</i>		<i>Bureau/Department</i>	<i>Number of Cases¹</i>
<i>Sector</i>	<i>Post</i>		
Education	Executive management	Beijing Office	1
		Education and Manpower Bureau	1
Others (for example, international/public organizations)	Executive management	Health, Welfare and Food Bureau	1
		Leisure and Cultural Services Department	1
	Security management	Hong Kong Police Force	3
	Training	Hong Kong Police Force	1
Total:			8

1 A retiree may submit more than one application.

(D) Paid Part-time Non-commercial Appointments

<i>Nature of Approved Outside Work</i>		<i>Bureau/Department</i>	<i>Number of Cases¹</i>
<i>Sector</i>	<i>Post</i>		
Education	Consultancy/ advisory service	Planning Department	2
		Teaching/ academic research	Buildings Department
	Civil Service Bureau		10
	Department of Health		2
	Inland Revenue Department		5
	Social Welfare Department		2
	Transport Department	3	
Charity	Consultancy/ advisory service	Radio Television Hong Kong	1
	Tutor	Office of the Government Chief Information Officer	2
Others (for example, international/public/ professional organizations)	Consultancy/ advisory service	Hong Kong Monetary Authority	1
		Hong Kong Observatory	1
	Teaching	Civil Service Bureau	1
		Inland Revenue Department	1
	Committee member	Office of the Government Chief Information Officer	1
Casework	Government Logistics Department	1	
		Total:	35

1 A retiree may submit more than one application.

(E) Honorary Appointments or Unpaid Services

<i>Nature of Approved Outside Work</i>		<i>Bureau/Department</i>	<i>Number of Cases¹</i>
<i>Sector</i>	<i>Post</i>		
Education	Executive Management	Information Services Department	1
		School management	Buildings Department
	Home Affairs Department		1
	Teaching/ academic research	Department of Health	2
		Environmental Protection Department	1
		Hong Kong Police Force	2

<i>Nature of Approved Outside Work</i>		<i>Bureau/Department</i>	<i>Number of Cases¹</i>
<i>Sector</i>	<i>Post</i>		
Commerce/Finance	Consultancy/ advisory service	Inland Revenue Department	1
	Corporate management	Highways Department	1
		Inland Revenue Department	1
	General administration	Education and Manpower Bureau	1
		Housing Department	1
Medical service	Executive management	Home Affairs Department	1
		Legal Aid Department	1
		Leisure and Cultural Services Department	2
	Advisory/ clinical service	Department of Health	2
Charity	Consultancy/ advisory service	Buildings Department	1
	Executive management	Legal Aid Department	3
	Council member	Buildings Department	1
		Correctional Services Department	1
		Home Affairs Department	1
Volunteer work	Buildings Department	1	
Others (for example, international/public/ professional organizations)	Council/board member	Buildings Department	3
		Home Affairs Department	1
		Leisure and Cultural Services Department	2
		Rating and Valuation Department	2
	Executive management	Environmental Protection Department	1
	Consultancy/ advisory service	Home Affairs Department	1
		Hong Kong Observatory	1
		Hong Kong Police Force	1
		Inland Revenue Department	1
	Speaker	Inland Revenue Department	2
Total:			44

¹ A retiree may submit more than one application.

Applications for Post-retirement Outside Work rejected in respect of Officers at MPS Point 34 to 49 or equivalent and Directorate Officers who retired between 1 January 2004 and 30 June 2006

<i>Bureau/Department</i>	<i>Number of Rejected Cases</i>	
	<i>Officers at MPS 34 to 49</i>	<i>Directorate officers</i>
Civil Aviation Department	0	1
Civil Service Bureau	2	0
Education and Manpower Bureau	2	0
Legal Aid Department	0	1
Transport Department	0	1

Progressive Block Tariff Structure

11. **MR ALBERT CHAN** (in Chinese): *President, at present, CLP Power Hong Kong Limited (CLP) adopts a progressive block tariff structure for domestic customers; the basic bi-monthly charge rate is 86.2 cents for each of the first 400 units, 93.2 cents for each of the next 600 units, and so on. Many members of the public have complained that this tariff structure is unfair to large households. In this connection, will the Government inform this Council whether:*

- (a) *it knows CLP's justifications for adopting the progressive block tariff structure for domestic customers;*
- (b) *it knows if CLP has, in formulating the progressive block tariff structure for domestic customers, considered its impact on large households; if it has, of the details; if not, the reasons for that; and*
- (c) *it has measures to ameliorate the above problem; if so, of the details of the measures; if not, the reasons for that?*

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

-
- (a) CLP has implemented an inverted block structure for domestic tariff since 1996 in order to encourage domestic customers to save electricity and achieve the objectives of efficient use of energy and protection of the environment. Upon changing from monthly to bimonthly billing for domestic customers in 1998, CLP doubled the block size of domestic tariff to ensure that the electricity charges paid by consumers would not increase as a result of this change. For example, the lowest unit rate was changed from 86.2 cents for the first 200 units of electricity consumed in a month to 86.2 cents for the first 400 units of electricity consumed in two months.
- (b) According to CLP, while the number of family members has a bearing on the electricity consumption of a household, the overall consumption is also notably affected by the energy efficiency of household appliances chosen by the family as well as the family members' practices and habits in using their appliances. CLP has indicated that the needs of domestic customers and related factors have been taken into account in formulating the tariff structure. Under the current tariff structure, domestic customers are charged based on their total bimonthly electricity consumption under four blocks. The unit rates are 86.2 cents for the first 400 units of electricity consumed, 93.2 cents for the next 600 units and at two progressively higher levels for the remaining two blocks. As a result, all domestic customers, including large households, can enjoy the lower tariff rate for the first 400 units of electricity consumed. In addition, CLP provides concessionary tariff to the elderly. All qualified elderly persons are offered half-price for the first 400 units of electricity consumed in two months and an exemption of the minimum charge per bill.
- (c) The merit of an inverted block structure is to encourage domestic customers to save electricity, in order to help reduce the growth in long-term electricity demand and achieve the objectives of efficient use of energy and protection of the environment. Many other major cities, such as San Francisco, Tokyo, Seoul and Taipei, have also adopted a similar structure for their domestic tariffs.

Management and Preservation of Records of Government and Statutory Bodies

12. **MS MARGARET NG:** *President, regarding the proper management and preservation of records of the Government and statutory bodies to facilitate public access, will the Government inform this Council:*

- (a) *whether any laws of Hong Kong or government regulations have imposed restrictions which prohibit or hamper the identification, transfer and preservation of and public access to archival records including records created electronically; if so, how these restrictions are dealt with at present;*
- (b) *how the Government guards against malicious destruction of or tampering with government records; whether there were such acts identified in the past five years; if so, how such acts were found out and the consequences thereof;*
- (c) *whether there were any archival records the public access to which was withdrawn or threatened to be withdrawn by the Government in the past five years; if so, how such acts were found out and the consequences thereof; and*
- (d) *given that records of statutory bodies (such as the Hospital Authority) are created by public money, whether there is any mechanism for ensuring that such records are properly managed for accountability and public access, and whether they are selected for transfer to the government archives for preservation and public access?*

CHIEF SECRETARY FOR ADMINISTRATION: President,

- (a) The Government has put in place administrative arrangements to facilitate the identification, transfer and preservation of and public access to archival records. These include establishment of the Government Records Service (GRS) to oversee the management of government records on a government-wide basis; promulgation of relevant records management procedures and guidelines; and appointment of Departmental Records Managers in each bureau and

department to ensure that government records are properly managed and maintained.

The provisions of the Personal Data (Privacy) Ordinance (Cap. 486) could impact on the transfer and preservation of archival records where the records are comprised of personal data. In maintaining archival records, the GRS complies with all the laws of Hong Kong and government regulations.

- (b) Under the records management guidelines, records proposed by bureaux and departments for destruction have to be vetted by the GRS before actual disposal. Disciplinary action will be taken against civil servants for maliciously destroying or tampering with government records. No such disciplinary cases were processed under the Public Service (Administration) Order during the past five years.
- (c) During the past five years, the Government has not withdrawn or threatened to withdraw public access to archival records.
- (d) There are some 200 statutory bodies set up by enabling legislation; not all of them are publicly funded. All statutory bodies have to operate within the confines imposed by relevant legislation and have to be accountable for their own proper management. They are not obliged to transfer their records to the GRS. That said, the Government does encourage statutory bodies to adopt appropriate measures to enhance their transparency and accountability to the public. Many of them have made available for public inspection papers and minutes of meetings, statistical reports, human resources information and statistics, and other documents and papers.

Discontinuing Posting of Job Vacancy Information

13. **MR LEUNG YIU-CHUNG** (in Chinese): *President, it has been reported that in order to tie in with the Wage Protection Movement (WPM) for the cleansing and guarding service sectors, the employment service of the Labour Department (LD) will, starting from this month, discontinue posting for employers the information on job vacancies in these sectors with wages lower*

than certain levels, that is, the average market rates for the relevant occupations published in the Census and Statistics Department's (C&SD) Quarterly Report of Wages and Payroll Statistics (Quarterly Report). In this connection, will the Government inform this Council:

- (a) how the LD determines if a job vacancy falls in the "cleansing" or "guarding" service sector;*
- (b) among the vacancies in various sectors received by the LD in the past three months, of the number and percentage of vacancies in each sector with wages lower than the above levels;*
- (c) whether it has assessed if the LD's above practice is unfair to workers in sectors other than those of the cleansing and guarding services; if the assessment outcome is in the negative, of the justifications for that; and*
- (d) whether the LD will consider immediately extending this practice to vacancies in all sectors, if not, the reasons for that?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Chinese): President, on 11 October 2006, the Chief Executive announced in his policy address that the Government would join hands with the business community and labour sector to launch a WPM for cleansing workers and security guards. Through voluntary participation and the use of written employment contracts, employers are encouraged to pay these workers wages not lower than the relevant average market rates as published in the C&SD's Quarterly Report.

To tie in with the WPM, the LD's employment service for vacancies for cleansing workers and security guards will only be extended to those vacancies offering wages not lower than the average market rates as published in the Quarterly Report with effect from 27 October 2006.

Generally speaking, cleansing worker vacancies include those requiring workers to be responsible for general cleaning work and cleaning lavatories, toilets and washrooms. As for security guard vacancies, they include those requiring workers to prevent unauthorized entry into building, patrol regularly to

prevent violence, fire or disturbances, and provide immediate assistance in case of emergency.

The industry and occupational classification of vacancies received by the LD has always been different from that of the Quarterly Report. Given this and the large number of vacancies involved (the Department received over 130 000 vacancies during July to September this year), we are not in a position to compare the wage levels of these vacancies with the information in the Quarterly Report.

The more mainstream public opinion now is that wage protection should focus on cleansing workers and security guards. To encourage employers to pay these workers the relevant market average wages, the LD has made corresponding arrangement to discontinue posting for employers job vacancies for cleansing workers and security guards with wages below the market averages. Subject to the outcome of the review of the above arrangement, the LD has no intention at present of extending the above arrangement to vacancies in other sectors.

Cross-boundary Coach Services

14. **MR CHEUNG HOK-MING** (in Chinese): *President, many residents in Tsing Yi have recently relayed to me their strong request for additional cross-boundary coach (CBC) services between Tsing Yi and Huanggang. In its reply to a question on introducing additional CBC services in this Council on 23 May 2001, the Administration advised that it was exploring the feasibility of providing a CBC terminus at the Tsing Yi Airport Railway Station. In this connection, will the Government inform this Council:*

- (a) *whether it has completed the above feasibility study; if it has, of the findings of the study and whether it has released the findings to the public; if it has not, of the reasons;*
- (b) *of the respective details of patronage and frequencies of the existing CBC routes;*
- (c) *whether it has received any requests for additional CBC routes; if it has, of the authorities' response; and*

- (d) *whether currently the authorities have any plans to re-examine the introduction of additional CBC services and whether CBC routes between Tsing Yi and Huanggang are included?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in the absence of Secretary for the Environment, Transport and Works) (in Chinese): President, the Transport Department had reviewed the short-haul CBC services between Huanggang Control Point and different parts of Hong Kong. Survey results revealed that the number of passengers travelling between Kwai Tsing District and Huanggang Control Point accounted for less than 1% of the total number of passengers. We therefore considered it unnecessary to set up a CBC terminus at the Tsing Yi Airport Railway Station. We have submitted information papers to the Legislative Council Panel on Transport in August 2004 and July 2005, reporting the progress of regularizing CBC services.

The numbers of CBC trips and passengers from January to September 2006 are as follows:

	<i>Daily average number of one-way trips</i>	<i>Daily average number of southbound and northbound passengers</i>
Short-haul services (via Lok Ma Chau/ Huanggang Control Point only)	1 140	48 800
Long-haul services (via all control points)	1 200	34 800

As CBCs travel between Hong Kong and the Mainland, they have to be regulated jointly by the Governments of the Hong Kong Special Administrative Region and Guangdong Province, and any adjustment to the level of service would require the agreement of both Governments before it can be implemented. We have received requests for introducing more cross-boundary coach routes. However, as there is very limited space at the Huanggang Control Point that can be used as CBC terminus, and the traffic at Lok Ma Chau/Huanggang Control Point is already very busy, we have no plans at this stage to introduce more short-haul CBC routes between Huanggang Control Point and other parts of

Hong Kong (including Tsing Yi). We will, however, closely monitor the traffic conditions at all control points and passenger demand upon the commissioning of new boundary control points, and review if there is any room to enhance the service level.

Cremation Service for Pets

15. **MR FRED LI** (in Chinese): *President, regarding cremation service for pets, will the Government inform this Council:*

- (a) *of the existing number of companies in Hong Kong which provide pet cremation service;*
- (b) *of the total number of complaints received by the authorities over the past three years about environmental problems caused by pet cremators installed in multi-storey industrial/commercial buildings, the details of these complaints and how the authorities handled such complaints; and*
- (c) *whether it will consider setting up a licensing system to regulate pet cremation service and including, in the licensing conditions, permitted operating hours of pet cremators and the requirement that such cremators be located at places far away from residential areas, and so on?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in the absence of Secretary for the Environment, Transport and Works) (in Chinese): *President,*

- (a) Based on the complaints handled by the Environmental Protection Department (EPD), it is estimated that there are at present six pet cremation service companies in Hong Kong. The pet cremators of three of them are located in multi-storey industrial/commercial buildings, while the rest are located in rural areas;
- (b) Between November 2003 and October 2006, the EPD received a total of 38 complaints about the smoke and odour emitted from pet cremators, most of which were repeated complaints against

individual pet cremation service companies located in multi-storey industrial/commercial buildings. The EPD will carry out site investigations upon receipt of complaints. If it is confirmed that the cremation process causes air pollution, the EPD will issue a statutory notice, requiring the company to take measures to reduce the emission of air pollutants. During the above period, the EPD issued notices to four pet cremation service companies. Subsequently, these companies took various measures to abate the emission of air pollutants; and

- (c) The possible impact of pet cremation service on the environment is air pollution. Under the existing Air Pollution Control Ordinance, the operation of a cremator (including a pet cremator) of a burning capacity exceeding 0.5 tonne per hour is a "specified process". The owner of the cremator has to apply for and obtain a "specified process" licence from the EPD before he is allowed to operate the cremator. If the emission from a pet cremator causes air pollution to the neighbourhood, the EPD can, upon verification through investigations, issue a statutory notice to its owner under the Ordinance to require him to abate the emission of air pollutants. Any person who does not comply with the notices commits an offence. Therefore, we consider the existing legislation adequate for controlling the air pollution problem caused by cremators. We have no plan to set up a licensing system to regulate the operation of pet cremators.

Psychiatric Services in Public Hospitals

16. **DR JOSEPH LEE** (in Chinese): *President, it has been reported that the Hospital Authority (HA), in restructuring the psychiatric services in its clusters, has deployed from other clusters 180 psychiatric beds for acute cases to the Kowloon Central Cluster. The occupancy rate of psychiatric beds of the hospital concerned in that Cluster, however, immediately reached 100% and temporary beds have to be added. In this connection, will the Government inform this Council if it knows:*

- (a) *whether any additional resources have been deployed to the hospital concerned to tie in with the arrangements to provide additional beds*

and admission of acute cases; if so, the number of nursing staff and amount of funding involved; if not, the reasons for that;

- (b) the details of the plan to provide comprehensive and seamless psychiatric services to the residents of the Kowloon Central Cluster (including the deployment of staff and resources involved) and the expected effectiveness of such services, given that the HA has indicated that the increase in the number of psychiatric beds in the Cluster was to facilitate the provision of such services;*
- (c) the number of nursing staff, beds and in-patients in the existing psychiatric observation units and psychiatric wards of all the clusters in Hong Kong; whether any particular hospital has experienced an excessive intake of patients; if so, the details and how the situation is dealt with; and*
- (d) how the HA evaluates whether the planned services would meet the demands of the residents of the clusters concerned when planning for the psychiatric services of the clusters, whether any consultation has been conducted on the planning of the services, and how it ensures that adequate nursing staff and resources would be deployed to deliver the services concerned?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): President, the HA reorganized the psychiatric services in its hospital clusters in mid-2006, which involved the transfer of some psychiatric hospital beds in Hong Kong East and Kowloon West (involving 180 beds in total) to Kowloon Hospital in Kowloon Central Hospital Cluster. The main purpose of the reorganization was to facilitate the opening of the Kowloon Psychiatric Observation Unit in Kowloon Hospital. This Psychiatric Observation Unit now provides service to psychiatric patients in central and eastern Kowloon, who are to be admitted to a mental hospital for detention, custody or treatment under the Mental Health Ordinance. During the initial period after operation commenced, the Kowloon Psychiatric Observation Unit experienced some overcrowding problems. However, the HA has already taken contingency measures in October and started diverting some psychiatric patients to the Kwai Chung Psychiatric Observation Unit and the Pamela Youde Nethersole Eastern Psychiatric Observation Unit. The HA will continue to closely monitor the situation at the Kowloon Psychiatric

Observation Unit and take further contingency measures, if necessary. Our response to the specific questions raised by Dr Joseph LEE is set out below.

(a) and (b)

A total of 203 health care and other staff have been deployed to the Kowloon Psychiatric Observation Unit. In 2006-2007, the amount of resources allocated to the Unit in dollar terms (including staff cost and other operational expenditure) is around \$74 million.

Prior to the reorganization of the HA's psychiatric services, there were no medical facilities in Kowloon to serve patients who were required to be admitted to a mental hospital under the Mental Health Ordinance. The HA had to divert such patients from Kowloon to the Kwai Chung Psychiatric Observation Unit or the Pamela Youde Nethersole Eastern Psychiatric Observation Unit. Through the setting up of the Kowloon Psychiatric Observation Unit, the HA seeks to improve the geographical coverage of psychiatric services offered by public hospitals, and thereby reducing the need for patients to be admitted to hospitals in other districts.

(c) The current numbers of psychiatric medical and nursing staff, psychiatric beds, and psychiatric in-patients in various hospital clusters of the HA are set out in the tables below:

Psychiatric Medical and Nursing Staff

<i>Hospital Clusters</i>	<i>Number of Psychiatrists (As at September 2006)</i>	<i>Number of Psychiatric Nurses (As at September 2006)</i>
Hong Kong East	27	181
Hong Kong West	18	77
Kowloon East	24	73
Kowloon Central	27	199
Kowloon West	61	548
New Territories East	44	258
New Territories West	60	584
Total	261	1 920

Psychiatric Beds and In-patients

<i>Hospital Clusters</i>	<i>Number of Psychiatric Beds (As at September 2006)</i>		<i>Bed Occupancy Rates (As at September 2006)</i>	<i>Number of In-patients (As at 30 September 2006)</i>
	<i>Beds in the Psychiatric Observation Units</i>	<i>Other Psychiatric Beds</i>		
Hong Kong East	232	214	69%	282
Hong Kong West	-	92	66%	32
Kowloon East	-	80	75%	54
Kowloon Central	180	265	96%	364
Kowloon West	400	906	59%	750
New Territories East	240	388	71%	348
New Territories West	1 292	377	88%	1 171
Total	2 344	2 322	75%	3 001

At present, excessive admissions are not common occurrences in the psychiatric wards of public hospitals. If a certain ward is found to be overcrowded, the HA will take appropriate diversion measures to alleviate the situation.

- (d) In planning for the psychiatric services in its hospital clusters, the HA would mainly consider the demographic changes as well as the availability of community support facilities and services within their catchment areas, in order to provide the public with appropriate services. When making adjustments in provision of service, the HA would co-ordinate with all hospital clusters concerned in the deployment of manpower and other resources to ensure the smooth operation of various psychiatric services. All hospital clusters maintain close liaison with District Councils (DCs) within their catchment areas. For example, the hospitals clusters would consult the views of the DCs on their service plan each year, provide Members with updates on the services provided by the clusters and answer Members' questions.

Internationally Recognized Information Technology Certification

17. **MR SIN CHUNG-KAI** (in Chinese): *President, in regard to assisting local software developers and vendors in obtaining internationally recognized information technology (IT) certification so as to improve their products and the quality assurance procedures, and to enhance their competitiveness in securing software outsourcing contracts in the Mainland and overseas markets, will the Government inform this Council:*

- (a) *since the inception of the Capability Maturity Model (CMM) Assessment Grant, of the respective numbers of local software companies which have made applications and received funding support; the respective numbers of companies receiving funding support which have obtained CMM Certification or CMM Integration Certification, together with a breakdown by the levels of certification; and*
- (b) *given that the 2004 Digital 21 Strategy is drawing to its end, whether the authorities will, by continuing to provide funding support to the CMM Assessment Grant and adopting other measures, encourage and assist local software vendors in obtaining various internationally recognized IT certification expeditiously; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in the absence of Secretary for Commerce, Industry and Technology) (in Chinese):
President,

- (a) Since the inception of the CMM Assessment Grant, 26 local software companies have submitted applications and 15 companies have received funding support after vetting. One company, however, has subsequently dropped out. Eight companies have successfully obtained Level 2 or above certification in CMM/CMMI. Of these companies, five obtained CMMI L3, two obtained SW-CMM L3, and one obtained SW-CMM L2. Besides, four companies are under assessment and are expected to obtain certification early next year.

- (b) The Government will continue to encourage the local IT industry to upgrade its technologies and capabilities, as well as to facilitate its efforts in obtaining international and mainland certifications, such as CMM/CMMI and Computer Information System Integration Qualification Certification. As necessary, the Government will also consider financial support of the CMM/CMMI certification for companies from the local software industry.

Family-friendly Measures

18. **MR FREDERICK FUNG** (in Chinese): *President, in his newly delivered policy address, the Chief Executive said that "The SAR Government will actively work with the business community and non-governmental organizations (NGOs) to study ways to promote and deepen various family-friendly measures.....". In this connection, will the Government inform this Council:*

- (a) *whether the Government itself has implemented other family-friendly measures in addition to the five-day work week; if so, of the details of such measures;*
- (b) *of the specific methods (for example, through providing economic incentives and enacting legislation) the Government will take to promote and deepen the following family-friendly measures: fostering a culture of balancing work and life; implementing a five-day work week; prescribing standard working hours; introducing flexi-time arrangements for employees or arrangements for employees to work from home; providing job-sharing or freelance jobs; granting paid paternity leave to employees; and improving child care services and facilities;*
- (c) *apart from implementing the five-day work week, whether the Government will consider setting an example by taking the lead in implementing the other measures mentioned in part (b); if so, of the implementation timetable; if not, the reasons for that; and*
- (d) *given that in its reply to my previous question on the introduction of statutory paternity leave, the Government had said that as most companies in Hong Kong were small and medium sized enterprises,*

they were relatively less flexible in making staff deployment and the introduction of legislation to provide for paternity leave would increase their running costs and create operational difficulties, but the Government had also said that it was studying this issue, of the latest progress of the study, whether the study has included identifying ways to overcome the above difficulties, and whether reference has been made to relevant overseas experiences?

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

- (a) The Government aims to provide a family-friendly working environment to enable civil servants to cope with both work and family commitments. Under the basic principles of no additional staffing resources, no reduction in the conditioned hours of service of individual staff, no reduction in emergency services and the continued provision of some essential counter services on Saturday, the five-day week initiative was introduced into the Civil Service in phases from July 2006 to reduce work pressure of staff and to improve the quality of family life, without impairing operational efficiency. Heads of Departments may arrange their staff to work in staggered working hours as they consider necessary to meet operational needs.

Apart from maternity leave, the vast majority of civil servants are provided with full-pay annual leave, ranging from 22 to 40.5 days, for the purpose of recuperation from the pressure of work and attending to personal matters including taking care of their families.

- (b) The Employment Ordinance provides the basic conditions for creating a family-friendly working environment. It confers to employees various types of leave including rest day, statutory holiday, annual leave, maternity leave as well as maternity protection. In addition, if an employee reaches mutual agreement with his employer in relation to his absence from work, continuity of his employment contract will not be affected. These measures enable employees to balance their work and family needs.

Through publicizing the relevant messages to employers, employees and members of the public, the Government acts as a facilitator in promoting and deepening family-friendly employment practices.

The Labour Department (LD) has been actively promoting direct and frank communication between employers and employees to discuss employment conditions and work arrangements. We also encourage employers to adopt employee-oriented management policies. Implementing family-friendly employment practices has been one of our important promotional themes. For example, we will be:

- promoting the messages through the department's network of Human Resources Managers' Clubs in 18 trades and industries. Meetings for human resources practitioners are arranged to discuss and share experience on the adoption of family-friendly employment practices as well as other good people management methods;
- organizing large-scale seminars for employers and human resources practitioners, during which they are encouraged to understand and care for their employees' needs with respect to family and living and formulate suitable employment practices for their companies; and
- holding roving exhibitions at various locations throughout the territory to spread the theme widely.

These publicity efforts help promote a family-friendly working environment and encourage employers to adopt related employment practices.

The LD also encourages employers to introduce flexible working arrangement to cater for the needs of employees. For example, employers may allow employees to work flexi-time or work at home, provide employees with job-sharing or freelance jobs so that employees could take better care of their family responsibilities. In fact, many employers in industries like retail, catering and hotel have already arranged their employees to work flexi-time and

provided job sharing and part-time work because of operational needs.

As to whether standard working hours should be introduced in Hong Kong, views within the Labour Advisory Board and different sectors of the community remain diverse. Taking into account the views of stakeholders and having carefully considered our socio-economic situation, the Government has decided to launch the Wage Protection Movement for cleansing workers and security guards. Under the movement, employers are encouraged to, amongst other things, suitably compensate their workers if the latter have to work beyond contractual working hours.

The Government helps working parents who are unable to look after their young children through the child care services for children under six provided by subvented and non-profit-making organizations. NGOs also run After School Care Programme to address the after school care needs of students aged six to 12. Family in financial difficulties may be granted partial to full fee subsidy. In addition, flexible child care services such as extended hours service in child care centres, mutual help child care centres and day foster care service operated by NGOs, local groups, women's associations, and so on, are provided. To strengthen our support to families with young children in facing their family or personal problems, the Social Welfare Department (SWD) will launch a new small group day home service and extend the day foster care service. The SWD will also strengthen the service provision of mutual help child care centres by providing financial incentives to operators. Fee subsidy will also be made available for families with financial need.

- (c) We consider that individual organizations in the public and private sectors are in the best position to decide whether to adopt any family-friendly practices having regard to their operational circumstances, needs of their clients and views of their staff.
- (d) The Administration keeps an open mind on the introduction of statutory paternity leave. The LD is collecting information on overseas practices regarding paternity leave arrangement.

Meanwhile, we will strengthen our promotion on paternity leave and encourage employers to take care of the needs of male employees so that they could achieve a balance between work and family life.

Electronic Road Pricing Scheme

19. **DR KWOK KA-KI:** *President, regarding the consultancy study on the Electronic Road Pricing (ERP) scheme commissioned by the Government to update the transport model developed earlier, will the Government inform this Council:*

- (a) whether it will make public the brief to the consultant concerned so that the public may scrutinize whether the study conforms to the Protection of the Harbour Ordinance or the guidelines in Technical Circular No. 1/04 of 19 August 2004 issued by the Housing, Planning and Lands Bureau and the Environment, Transport and Works Bureau;*
- (b) of the details of any instructions relating to the proposed construction of the Central-Wan Chai Bypass (CWB) in the brief;*
- (c) whether it has instructed the consultant to present ERP models that are capable of reducing the existing volume of traffic in the Central to Causeway Bay corridor without the need for constructing the CWB;*
- (d) whether it has given the consultant any instructions relating to toll free usage of the roads concerned when there is through traffic;*
- (e) whether it has given the consultant any instructions relating to the income generated by the ERP scheme;*
- (f) whether it has instructed the consultant to conduct public consultation (as required by the Technical Circular) on the use of the revenue generated by the ERP scheme for improving public transportation, reducing pollution from public transportation and reducing other vehicle-based taxes; if it has, of the details of the public consultation; if it has not, of the reasons for that; and*

- (g) *whether it has instructed the consultant to compare the costs of the construction of the proposed CWB with those of the development of an ERP scheme which does not impose a toll when there is through traffic?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in the absence of Secretary for the Environment, Transport and Works): President, the purpose of the Congestion Charging Transport Model — Feasibility Study (the Study) commissioned by the Transport Department is to collect transport data for the development of a Congestion Charging Transport Model to replace the outdated model developed in the previous Electronic Road Pricing Feasibility Study, and to apply the new Model to assess the impacts of different congestion charging scenarios in relieving traffic congestion.

Under the Study, the consultant is required to study all relevant aspects of congestion charging, such as the charging areas, charging methods, the need for and availability of any alternative routes, impacts of charging on the traffic conditions of the nearby road networks, and so on. We have not given any specific instructions relating to the proposed construction of the CWB or the toll-free usage of concerned roads when there is through traffic. The consultant is free to examine any congestion charging scenarios.

The consultant is also required to carry out a broad assessment of the financial and economic aspects of the potential congestion charging scenarios. As the Study focuses on the development of a Congestion Charging Transport Model, we have not asked the consultant to compare the cost of developing a congestion charging scenario with that of any road projects.

The Technical Circular No. 1/04 sets out the requirements of the Protection of the Harbour Ordinance and provides guidance for public officers and public bodies to follow in considering and approving reclamation proposals. As the aforesaid Study aims to develop a transport model to facilitate the assessment of the impacts of different congestion charging scenarios, it does not come under the purview of the Circular. Nevertheless, we have deposited a copy of the Study brief at the Legislative Council Secretariat for Members' reference.

The revenue generated by a congestion charging scheme will form part of the General Revenue of the Administration, and its use will be considered in the overall context of the Administration's resource allocation where views from the public will be taken into account. We recognize that community consensus would be crucial for such a charging scheme. We will consult the public before any decision is made.

Free Air Conditioning for Activities Held in Community Halls

20. **MR LAU KONG-WAH** (in Chinese): *President, at present, organizations of specified categories may be exempted from the charges for hiring venues in the community halls (CHs)/community centres (CCs) of the Home Affairs Department (HAD) for organizing non-profit-making activities. However, the authorities have set different rules for various CHs/CCs about the provision of free air conditioning at the venues therein. Generally, the authorities will provide free air conditioning only when the outdoor temperature is 25.5 degrees Celsius or above and a certain number of persons using the venue has been reached. I have received complaints from many members of the public that when taking part in the active activities held in CHs/CCs by these organizations, they often found it stuffy inside and felt short of breath, and some of them even collapsed as a result. In this connection, will the Government inform this Council whether it will review the relevant rules and consider providing free air conditioning at CH/CC venues hired by such organizations for energetic activities or on humid days?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, the management of the CHs/CCs under the HAD mainly rests with the respective CH/CC Management Committees. These Committees usually comprise a wide cross-section of the district community, such as District Council members, district personalities, members of Mutual Aid Committees and school representatives. Detailed rules governing the hiring and use of CHs/CCs are drawn up by the Management Committees, having regard to guidelines on exemption of hiring charges for use of CHs/CCs issued by the HAD, their district needs and the need for effective use of resources.

Generally speaking, non-profit-making organizations hiring CHs/CCs for non-profit-making activities may apply for exemption of hiring and

air-conditioning charges. To ensure effective use of resources, some Management Committees have prescribed certain conditions for using air-conditioning in CH/CCs, such as specifying a certain indoor temperature and the minimum number of participants.

In the interests of environmental protection and conserving global resources, the Secretary for the Environment, Transport and Works has since October 2004 adopted an internationally accepted standard requiring all government premises to maintain a room temperature of 25.5 degrees Celsius during summer months. Where there are essential operational needs, the Secretary for the Environment, Transport and Works also allows departments to maintain their premises at a lower room temperature. In keeping with the requirement, the HAD has asked that the indoor temperature of all CHs/CCs be kept at this level during the summer months and in carrying out their day-to-day management duties at CHs/CCs, District Office staff have been advised to take into consideration the nature of the activity, for example, energetic activity, the number of participants when setting the room temperature of CHs/CCs. Where considered appropriate, they could set the room temperature below 25.5 degrees Celsius. This measure not only conserves energy but also ensures that the venues are maintained at an acceptable room temperature.

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I rise to move the motion to amend the Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006 (the Amendment Regulation) standing in my name on the Agenda to revise the exhibition licence fees for animals and birds as follows:

- (1) The licence fee for not more than 20 animals and birds is to be lowered from \$2,720 to \$2,190; and
- (2) The licence fee for more than 20 animals and birds is to be lowered from \$9,700 to \$7,790.

In response to calls from some members of public and Legislative Council Members to allow racing pigeon activities to continue in Hong Kong after the law banning illegal poultry keeping came into effect, we have earlier decided to issue "exhibition licence for animals and birds" to racing pigeon keepers to regulate rearing of racing pigeons in order to protect public health and safeguard environmental hygiene.

For this purpose, we put forward a fee revision proposal to set different fee levels for licences issued under the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139, sub. leg. F) at the meeting of Legislative Council Panel on Food Safety and Environmental Hygiene held on 9 May 2006. As the Panel did not raise objections to the proposal, the revised fee structure which lowered the licence fee from \$10,720 to \$2,720 for keeping not more than 20 animals and birds, and \$9,700 for keeping more than 20 animals and birds respectively was gazetted on 7 July. The new licence fees came into effect on the day of gazettal to enable the Administration to issue licences to racing pigeon keepers at the lowered fees immediately.

The Subcommittee on the Amendment Regulations (the Subcommittee) held several meetings to vet the proposal and raised some views about the licence fee levels. Having reviewed the regulatory work involved and adhering to the principle of "full cost recovery", the Administration agreed to enhance co-operation with racing pigeon keepers by requiring them to submit necessary information, such as cage sizes, to save the Agriculture, Fisheries and Conservation Department processing time and thus, lower the licence fees.

I therefore move the motion today to amend the Amendment Regulation to make the abovementioned revision to fees for exhibition licence for animals and birds. If the motion is passed, we will arrange to refund the difference of the new and old fee to those licensees who have paid the old fee for the licences. In addition, we will also compile information about overseas regulatory measures on racing pigeons, which was requested by the Subcommittee, and submit it to the Legislative Council Panel on Food Safety and Environmental Hygiene for

reference in due course. We shall also suitably review the regulatory measures for racing pigeons.

The above revision to the exhibition licence fees has the support of the Subcommittee. I hope Members would also support this motion.

Thank you, Madam President.

The Secretary for Health, Welfare and Food moved the following motion:

"RESOLVED that the Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006, published in the Gazette as Legal Notice No. 167 of 2006 and laid on the table of the Legislative Council on 10 July 2006, be amended, in section 1 -

- (a) in the new regulation 4(5)(a), by repealing "\$2,720" and substituting "\$2,190";
- (b) in the new regulation 4(5)(b), by repealing "\$9,700" and substituting "\$7,790"."

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.

MR FRED LI (in Cantonese): Madam President, I speak in my capacity of Chairman of the Subcommittee on Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006 (the Amendment Regulation). The Subcommittee has held three meetings with the Administration and received views from the relevant organizations.

The legislation for banning the keeping of backyard poultry came into operation on 13 February 2006. As the definition of poultry stipulated in the relevant legislation covers, *inter alia*, pigeons, local pigeon racing activities would be affected. Subsequently, the Government decided to issue a licence for animal/birds exhibitions under the existing legislative framework. According

to the Government's explanation, this will not only allow the keepers of racing pigeons to continue the keeping of racing pigeons, but also ensure that the keeping of racing pigeons will comply with appropriate biosecurity conditions stipulated under the Regulation in order to protect public health and maintain environmental hygiene. The Administration has adjusted downwards the fee for a licence from the original fee of \$10,720 to \$2,270 and \$9,700, depending on whether or not the total number of animals and birds exceeds 20.

The Subcommittee was concerned mainly about two points. First, is it appropriate to issue a licence for animal/birds exhibitions to keeper of racing pigeons? Members did not consider it appropriate for racing pigeon activities to be regulated by an exhibition licence which is meant for traditional large-scale animals/birds exhibitions, for example, in circus, the Ocean Park and amusement parks. It is unreasonable for the Administration to regulate racing pigeons under the existing legislative framework for the sake of administrative convenience. The Subcommittee considered that the Administration should implement a new regulatory regime for pigeon racing activities.

Another concern of the Subcommittee is the new level of the licence fee. A pigeon racing organization has pointed out that some overseas countries and places outside Hong Kong impose no fee or a nominal fee on pigeon racing activities which are promoted as a sport. The Subcommittee pointed out that the enforcement activities involved in regulating exhibition licences for racing pigeons should be different from that for traditional large-scale animals/birds exhibitions. The Subcommittee considered that the licence fees are unreasonably high for the pigeon keepers, and requested the Administration to consider a downward adjustment of the fees.

In view of the Subcommittee's concern over the licence fees, the Administration agreed to move a motion in order to lower the licence fees to \$2,190 and \$7,790. Although some members are still dissatisfied with the revised fees, they understand that if the Legislative Council repeals the Amendment Regulation, the original licence fee of \$10,720 under the Principal Regulations will be reinstated. This will pose a greater burden on the keepers of racing pigeons. So, the Subcommittee will not oppose the motion moved by the Secretary just now.

Besides, the Subcommittee has also requested the Administration to study overseas regulatory regimes on pigeon racing activities, consider whether a new

regulatory regime should be established for pigeon racing activities in Hong Kong, review the fees for application and renewal of the licence for animal/birds exhibitions and report the outcome to the Panel on Food Safety and Environmental Hygiene.

Madam President, next I would like to express views on behalf of the Democratic Party. During the past few months, pigeon racing groups have maintained contact with us, reflecting their views on various unreasonable aspects of the amendments. We consider many of their views most reasonable and know that they are prepared to apply for a judicial review on whether the exhibition licence is suitable for regulating pigeon racing activities. I sincerely hope that they are able to do so. Regarding this amendment, the Subcommittee has very limited room in dealing with it because it is related to fee determination. Members can only advise whether or not the fees are reasonable. If the amendment is negated, the original fees will be reinstated. In face of an unavoidable situation and without any alternative, we have to support the Government's existing amendment. However, I hope the Government and relevant government officials can understand that to regulate pigeon racing activities with an exhibition licence is wrong from the very beginning. Pigeon racing is an internationally recognized sport which is also very popular in the Mainland and Taiwan. The pigeons kept by activity participants for racing are not for exhibition purposes and it is really inappropriate to impose regulation through an exhibition licence.

Concerning the fees, they have also made reference to the situation in overseas countries and regions. At present, no fee or a nominal fee is imposed. In fact, no country will impose an exorbitant fee of more than \$2,000 and \$7,000 as currently proposed. I hope the Government will expeditiously commence a study on the experience of overseas countries instead of suppressing and depriving the racing pigeon lovers of their hobby by an administrative measure so as to avoid the gradual demise of such activities. I have to express these views on behalf of the Democratic Party and hope that the Secretary can consider their requests as soon as possible. I so submit.

MR WONG KWOK-HING (in Cantonese): Madam President, since the multiple outbreaks of avian influenza, a regulation banning the keeping of backyard poultry was imposed by the authorities on 13 February. No person shall hold an exhibition of animals and birds to which the public are admitted on

payment of a fee unless an application for licence or permit has been made with and granted by the Agriculture, Fisheries and Conservation Department (AFCD) under the regulation. Such an arrangement sounds reasonable when first heard. But after the announcement and implementation of the regulation, I have surprisingly received strong complaints from a group of angry racing pigeon keepers.

The truth is that in the relevant ordinance relating to exhibitions, the definition of poultry covers pigeons. As a result, a person who keeps a couple of racing pigeons domestically is treated the same as large-scale exhibition venues like Ocean Park and required to pay a large sum of licence fee for permission to keep the racing pigeons. Such an unfair arrangement has sparked fury of the 200-odd keepers of racing pigeons because according to overseas experience and local veterinary views, the risk of an avian influenza outbreak among pigeons is low. Even if avian influenza became rampant because of pigeons, it would not be necessary to eliminate all such activities. Although pigeon racing is categorized as a kind of exhibition by the authorities on grounds of public health, the ordinance previously targets at regulating traditional exhibitions of animals in circus and amusement parks. The nature and requirements of such ordinance are entirely inappropriate for keepers of racing pigeons because the two are totally different.

As various kinds of evidence show that the new measures by the authorities are inappropriate and keepers of racing pigeons have been rearing their pigeons in accordance with a standard which is more stringent than that for rearing pigeons for consumption on ordinary farms, why have the authorities still forced them to apply for licences in order to drive them out?

Keepers of racing pigeons certainly understand that public health is important. So, they have proposed to the Subcommittee that the authorities should grant a Livestock Keeping Licence instead of an exhibition licence that they are now required to apply for. Alternatively, the authorities may make reference to the voluntary registration scheme for local vegetable farms for regulating vegetable farmers. The information of pigeon keepers can be registered in lieu of application for licence. Unfortunately, both proposals have been rejected by the authorities. As a result, their sincere hope of co-operating with the Government has come to no avail.

Later, thanks to the Subcommittee's effort, the Government eventually agreed to concede and reduce the fees. The government department points out that if the applicant can co-operate with the AFCD by submitting collated information on pigeons rearing to the department for approval, the licence fee can be adjusted downward. In other words, the licence fee for less than 20 pigeons can be lowered from \$2,720 to \$2,190 and the licence fee for more than 20 pigeons can be lowered from \$9,700 to \$7,790. Such a downward adjustment in fees seems to be a big concession by the Government. But in fact, if we look at various places in the world, which country has imposed such an exorbitant price for keeping racing pigeons? As a member of the Subcommittee, I have explained how unreasonable it is. But the Government has turned a deaf ear. For instance, in the United Kingdom and China, no fee is imposed for keeping racing pigeons. In the United States, racing pigeon keepers are only required to pay US\$25 to US\$100 to the American Racing Pigeon Union. So, the department's fee reduction as a response to the appeal of the pigeon keepers has ignored the views of Members expressed at the meetings, that the licence fees are too high, the expenses too exorbitant, there is a mismatch between means and ends, and the measure is unsuitable for the need of regulating pigeon keepers.

In fact, as early as 2000, the Hong Kong Racing Pigeon Association, under the guidance of the inspection and quarantine department in China and some experts, had already compiled the Management Manual of Registered Pigeon Shelves for Registered Members of the Hong Kong Racing Pigeon Association, and also proposed to the Government a pigeon registration and licensing regime. However, the Government did not pay any attention. Neither did it assist the Association to negotiate with the inspection and quarantine department in China. Because of the two outbreaks of avian influenza, racing pigeons in Hong Kong have been unable to take part in training and competition in the Mainland for as long as seven years. Now, the authorities concerned had introduced subsidiary legislation in a hurry and it was gazetted on 7 July before negative vetting by the Legislative Council. The Government is trying to force the pigeon keepers into compliance by such an approach. If Members oppose the relevant legislation, pigeon keepers will be required to pay \$2,720 to \$10,000 in licence fees. Even if Members support the relevant legislation and the burden of pigeon keepers seems to be alleviated, they still have to pay a licence fee of \$2,190 to \$7,790.

Madam President, I do not consider such an approach is a reflection of strong governance. Rather, it is in fact a measure of an oppressive and barbarous government. It is a typical example of a barbarous bureaucracy. Regarding such bureaucracy of the government department which has turned a blind eye to the reasonable request of the industry and imposed an administrative measure to deprive the public of the right to keep racing pigeons, leading to the demise of such a healthy activity, I once again reflect the strong dissatisfaction and objection of the racing pigeon keepers.

Madam President, I will vote against the motion.

MR LEUNG KWOK-HUNG (in Cantonese): President, the incident is indeed ridiculous. The officials concerned of the Government have created a novel name, an exhibition licence. If someone, after paying \$2,100 to \$7,900 for an exhibition licence, really organizes a pigeon exhibition in revenge, this will defeat the legislative intent. According to what the Government said, it will be easier for avian influenza to spread in that eventuality. This is really ridiculous.

Under the shadow of avian influenza, the Government has adopted a bureaucratic approach, that is, a blanket approach of imposing the same regulation on rearing of poultry, regardless of whether they are chickens or pigeons and regardless of whether they are racing pigeons or roasted pigeons as food. The racing pigeons are kept for taking part in racing instead of consumption. These lively racing pigeons are intelligent. In order to cut the Gordian knot with a swift sword, the Government has created an exhibition licence. Does the Government not consider it hilarious? If a licensee organizes a circuit exhibition of pigeons or invites a visit by the public, does the Government not consider it detrimental to public health? Originally their racing pigeons are not for exhibition, but after applying for such a licence, they have the right to do so. According to the Government's stipulation, a fee of \$2,100 is imposed for less than 20 pigeons. After paying the fee, they can go around to exhibit the pigeons. Visits will be paid by me and my colleagues. We may contract avian influenza after touching them. I do not know what the Secretary will think. This is obviously a kind of bureaucracy: You will certainly succumb to a novel name. That is the attitude of Hong Kong people. They will resign to a novel idea. I urge racing pigeon keepers to exhibit their pigeons in front of the office of Secretary Dr York CHOW to see if there is any problem.

This is really a joke. The incompetence of government officials has become a joke. The most unfair phenomenon is that the racing pigeon keepers have to suffer loss and pay extra money because of a hobby. The Government or many people may say that keeping racing pigeons will of course cost money. I think this is wrong because a government should not impose a charge or a service on the people unless it is inevitable. The setting up of such an exhibition licence is a bit similar to the practice in the Mainland. Various charges are imposed on different matters such as repair of roads, giving birth to children and slaughter of pigs and chickens. When have we restored the system of apportioning expenses of the Mainland? Why did the Government not think of a better way to manage this sector?

I have received letters from many racing pigeon keepers who have made a lot of proposals in them. But I have never heard the Government give any response to people's proposals. I meant response to the public not me because I have no knowledge in this aspect. Concerning the whole issue, what we have seen is the logic of the marketplace, and that is, to present a *fait accompli*, meaning that I charge you a large sum of money first before making a reimbursement. But now we are not buying things in the Women's Street or the Apliu Street where you have to bargain down an exorbitant asking price. I often go to the "Women's Street" to buy T-shirts. The shop owner would first ask for \$80 and then say that \$40 could make a deal when I walked away. When I walked farther away, he would say, "\$25, a good bargain for you! Today is my birthday." Now the Government has adopted such an attitude. The fee has been reduced from the original of 10,000-odd to the present level. Besides, it argued with Members in the Subcommittee that the fees would not be reduced further if Members did not support the proposal and Members should give serious thoughts to it. The government officials should examine their conscience and ask themselves whether this is reasonable. How can the Government tell Members that if Members do not agree to the Government's approach, it will be sorry for that because according to the law, Members cannot lower the fees prescribed by the Government. Members can either take it or leave it. If this proposal is not accepted, no assistance can be offered to the pigeon keepers. What kind of politics is this? I said yesterday that this was a kind of blackmail politics under which the reasonable rights and welfare of the people are regarded as the gifts of the Government which can decide how much should be given and withdraw them at any time. We have become the ransom payer. The Government said that if Members made a bargain again, the hostage would be killed and the ransom would be increased by \$5 million for

further bargaining. Is he CHEUNG Chi-keung? So, on the whole issue, I can understand the bitter feelings of the racing pigeons keepers.

The peremptory attitude of the government officials has given rise to another incident. Now pigeon keepers have applied for a judicial review, intending to solve the case with the Government in Court. Each time, the Government will hire the best barrister to deal with the case. I had been involved in lawsuits with the Government, knowing that it is prone to costing millions of dollars. But how much revenue will be generated for the Government in this aspect? The Government often forces the people to seek justice in Court. The Legislative Council has originally given the Government a graceful way out by making just a minor concession. But the Government refused. As a result, the people have to seek justice in Court. Who will benefit from this eventually? No one will. But the lawyers will get the benefit, as well as the prestige of the government officials. This is entirely unreasonable.

The keepers of racing pigeons have requested me to reiterate one point. They said that the pigeons could fly freely and they were worse off because they were kept in an invisible cage. They think that the department concerned of the SAR Government does not work for the people, but work for themselves. So, I hope the President can appreciate that it is a shame to discuss the fees today. The fees have been reduced from the original level of \$2,700-odd to \$2,100-odd and from \$9,700-odd to \$7,900-odd. The Government then tells the whole society: If you do not make concession in order to avoid trouble, the original fees will be reinstated and the people will be required to pay more than \$10,000 in licence fee. I have only heard such logic at one place, that is, the triad society: If you call the police, the consequence will be more serious. The tone smacks of that of a debt collector.

So, I hope colleagues will understand that I will vote against the motion later. I hope the authorities can reflect on the matter and make reference to the approach adopted by other regions. This is an unreasonable apportioning of expenses, like the corvee imposed and created by a monarch. So, I hope our veto of the motion will prompt the Government to draw a lesson from a bitter experience. I do not subscribe to the logic of the Government. I do not subscribe to the Government's saying that there is no other alternative and Members should support the Government's proposal for the good of the people. I think this is not feasible. I hope the racing pigeon keepers can understand that

I will vote against the motion later. I think this is a matter of dignity and the Government should attach weight to this view and rein in at the brink of precipice. It is still not too late to make amends.

Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, moments later we will pass — or vote on what I call a "threatening" amendment to legislation. President, why do I say that it is "threatening"? In fact, a few Members have already pointed out just now that if we do not pass this amendment, it will make those keepers of racing pigeons pay even higher fees, and so this is "threatening".

President, I am also a member of the Subcommittee, and I have also emphasized several questions in the Subcommittee meetings, but the Bureau has not answered them. One of the questions which I posed was: Do we have the time and space now to find another ordinance or enact a separate ordinance tailored for the present circumstances? However, the Bureau stated that they had made an effort in searching and found the most suitable ordinance for them among the existing ones.

President, I strongly oppose this point, and I do not agree to this approach. It is true that this may be the most suitable one among the existing ordinances. However, why must we choose a suitable ordinance from the existing ones instead of enacting a new one? In fact, we have the time and space to do that and the situation is not so urgent as to call for immediate action.

President, why do I have this question about enacting a new ordinance? It is because I think that in the legislative process, we have to call a spade a spade and not let anybody have any false impression or understanding. This Ordinance itself is very clear and several Members have pointed out that it is an ordinance on the exhibition of poultry, and not an ordinance in relation to poultry for competition purposes. They are completely two different matters. If we simply look at it from the legal perspective, it is hard to comprehend that it can actually apply to racing pigeons.

Some Members have also explained that this Ordinance only applies to exhibitions, for instance, pigeons performing in Ocean Park. However, we are

discussing racing pigeons and it is in essence a completely different matter, how can we insist on using this Ordinance? In fact, racing pigeon keepers are not only discontented with the expensive fees but also feel that the authorities do not have any respect for the sport of pigeon racing, and this is the most significant point. If we enact legislation with the term "pigeon racing", that would represent the value, respect and affirmation for their existence, but if the regulation only comes in the name of "exhibition", it will relatively obliterate and bury this sport of theirs.

President, a Member has just criticized government bureaucrats for randomly picking this Ordinance for their convenience, but my criticism goes beyond that. I think the Government does not respect some of the traditional culture, sports or industries. The Administration does not have the heart to respect and maintain these cultures so that they can exist and continue their development. The Administration has no such mindset. This is actually what we feel pathetic about.

In fact, to date, Hong Kong is still criticized for not knowing whether it has a past. It is because we have seldom made such affirmation with regard to heritage and other aspects. For example, for some temples with years of history, the Government would not indicate the intention to preserve them for their hundreds of years of history; the Government does not have this kind of mindset and it has not done any work of this kind. As a matter of fact, pigeon racing is a sport of long history and special characteristics. Why do we not affirm and support it, or promote or develop it? If we really take this approach, we should enact a new law to assure or maintain the development of this sport. However, it is not the case right now and the authorities only pick the convenient ordinance.

Therefore, regardless of whether this legislation will pass or not today, I think it has already shown that the Government does not respect this kind of activity. The authorities have no respect for it. I hope the Government will withdraw this piece of legislation and enact a new one, but this is a difficult move in practice. However, from a long-term perspective, why do we not consider enacting a new ordinance to maintain and regulate it properly?

We have to understand that it is impossible to impose no regulation. In fact, in the urban area, keeping racing pigeons will definitely affect residents,

and therefore regulation is necessary. Those keepers of racing pigeons also agree that regulation is necessary. The question remains whether the regulation is justified and decently conducted as opposed to the careless and arbitrary approach now. This is the most important thing.

Today, we would like to convey this message to the Government, but I would vote against this motion. I hope the Government can place importance on this activity of these people and its spirit, and not to deal with it in a sloppy manner.

President, I so submit.

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

MR WONG YUNG-KAN (in Cantonese): Why has this legislation been proposed? In fact this is directly related to avian flu. At the start of this year, due to avian influenza Hong Kong conducted an exercise to cull all live chicken, which stirred up the city. Even pigeons were almost not spared, that is those wild, unregulated pigeons or those reared by keepers at not more than 20 in number. This is why the Government has to legislate urgently.

In this urgent legislative process, we are supportive of the legislation. We had also asked the Government and many experts whether racing pigeons would carry avian influenza, and the Government told us clearly that racing pigeons would not carry the virus. Whether or not it will happen in the future is unknown, but such phenomenon will not appear at the present stage. Currently, there is a group of people in society who love pigeon racing. They had come to the New Territories for me a few years ago, and discussed with us the quarantine problem they faced when returning to the Mainland for pigeon racing. They requested our assistance and we made efforts helping them.

After that, we have asked the Agriculture, Fisheries and Conservation Department to which category pigeon racing belongs. Is it a sport, livestock keeping or aesthetic enjoyment? I once asked the officials from China's Ministry of Agriculture in Beijing, and they told me that pigeon racing is a kind of sport, a competitive sport. It is because these people who participate in

pigeon racing are all teamed up. They would ship pigeons to the Mainland by car and they will, after passing quarantine, engage in competition across different provinces. If there were a disease outbreak, basically they would be infected already.

When we listened to the views from different groups, they also raised these examples. Many Members also raised them just now. In fact, when making this legislation, I also asked the Government at one of the meetings whether it would conduct research on international regulation on pigeon racing, including charges. The Government indicated then it could do so. In addition, we believe that now this legislation has to be enacted, so we suggest an adjustment to the licence fees, but we do not know why the adjustment rate proposed by the Government is so small.

Certainly, the pigeon fanciers agree to be regulated by the Government, they agree to it and hold no objection. Therefore, I think that the Government has been very passive in the legislative process, not actively gathering opinions to study how it can be done in a more open and better manner. Now the world has acknowledged that pigeons are not virus carriers, it is of course only the present circumstances, and the future is uncertain. We all have no idea of the problems that would be brought by the changes in the environment and climate in the future. Now the pigeon fanciers had put forward the idea that they be regulated, which is reasonable indeed, but the Government did not concur in the end.

I have to ask this question again. During the legislative process, should the Government not consider how to deal with pigeon racing? It is because this is a competitive sport not unique to Hong Kong and there are exchanges between Hong Kong and China and different places in the world. Will the Government reconsider this question? I hope the Secretary will indicate whether he will study this matter in his reply later.

Madam President, on this issue, the DAB is actually supportive of the Government. We only want to ask the Government if it will do something more for pigeon racing, conduct more research so that it can converge with the world, formulate measures which suit the pigeon fanciers and prevent the sport of pigeon racing from disappearing.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Health, Welfare and Food to reply.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I would also like to explain again the position of the Government. Unfortunately, those Members who oppose the motion are all away from the Chamber now. They basically do not want listen to my explanation. Why does the Government think that this legislation must exist and use it to regulate racing pigeons? The main reason is certainly the fact that we are facing the risk of avian influenza.

Early this year, 16 birds were found with avian influenza in Hong Kong. This is a very special discovery in the territory, and we are also aware that this risk will continue throughout every winter. We therefore enacted legislation to prohibit backyard poultry. For pigeons among poultry, although there is up to now no available scientific evidence to prove that pigeons have carried H5N1 virus, we cannot dismiss the possibility that this phenomenon will happen because the virus — especially among poultry — will spread continuously and pigeons may also be affected in the future. However, we believe that under the prohibition of all backyard poultry, there is now at least some room for pigeon fanciers to continue their beloved activity.

Pigeon racing is about letting birds soar and glide, rather than putting them in cages. Therefore, if these pigeons flying in the sky really carry the virus, it will create some additional risks because they are not placed in cages. Therefore, we must take the responsibility to regulate them.

We have held discussions with the sector. Some of the racing pigeons that they bought were very expensive. Some cost tens of thousands of dollars each and some even cost 100-odd thousands dollar each, especially those who have won competitions. The industry also thought that, if there were good regulation and in particular inspections of the health conditions of their pigeons, they would be willing to pay these fees. Therefore, when amending the

legislation, we also considered the fact that if we submitted a new bill on pigeon racing and study into it slowly, it could take a very long period. However, if we handle the situation by amending the existing regulations, we can immediately resolve the issue and settle the problem as early as possible.

The government charges are founded on the need to send personnel to inspect places where pigeons are kept so as to prove that they are healthy and conduct health checkups on them, and even virus checks. This incurs costs and our existing charges are calculated on the basis of these costs.

I think that in this aspect, the Government has been co-operative with pigeon fanciers and they are mutually understanding and accommodating. We believe that the current position of the Government is to let pigeon fanciers pay an appropriate fee. The Government can then check the health conditions of their pigeons and allow them to carry on with their beloved activity. I believe I have already explained clearly the principle behind our amendment to the regulations and I hope it will get the support of Members. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food 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 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.

Mr James TIEN, Mr Albert HO, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming and Mr CHIM Pui-chung voted for the motion.

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Frederick FUNG, Mr WONG Kwok-hing and Mr LEUNG Kwok-hung voted against the motion.

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

THE PRESIDENT announced that there were 36 Members present, 30 were in favour of the motion and five against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the four items of subsidiary legislation made under the Merchant Shipping (Local Vessels) Ordinance, which were tabled in Council on 11 October 2006.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS MIRIAM LAU (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

At the House Committee meeting on 3 November 2006, Members agreed that I, in the capacity of Chairman of the House Committee, will move a motion to extend the scrutiny period of the four regulations made under the Merchant Shipping (Local Vessels) Ordinance, which were tabled in Council on 11 October 2006 to 29 November 2006 so that the Administration can have sufficient time to move a motion to amend the said regulations.

With these remarks, Madam President I urge Members to support the motion.

Ms Miriam LAU moved the following motion:

"RESOLVED that in relation to the -

- (a) Merchant Shipping (Local Vessels) (General) Regulation, published in the Gazette as Legal Notice No. 193 of 2006;
- (b) Merchant Shipping (Local Vessels) (Safety and Survey) Regulation, published in the Gazette as Legal Notice No. 194 of 2006;
- (c) Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation, published in the Gazette as Legal Notice No. 195 of 2006; and
- (d) Merchant Shipping (Local Vessels) (Works) Regulation, published in the Gazette as Legal Notice No. 196 of 2006,

and laid on the table of the Legislative Council on 11 October 2006, the period for amending subsidiary legislation referred to in section

34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 29 November 2006."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Miriam LAU 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 passed.

PRESIDENT (in Cantonese): Two motions with no legislative effect.

First motion: Implementing a licensing regime for property management companies and establishing a Building Affairs Tribunal.

IMPLEMENTING A LICENSING REGIME FOR PROPERTY MANAGEMENT COMPANIES AND ESTABLISHING A BUILDING AFFAIRS TRIBUNAL

MISS CHOY SO-YUK (in Cantonese): President, may I ask if the Secretary will attend the meeting?

(The Secretary for Home Affairs entered the Chamber at this point)

PRESIDENT (in Cantonese): You can now move your motion.

MISS CHOY SO-YUK (in Cantonese): OK.

President, I move that the motion, as set out on the Agenda, be passed.

The motion proposed today consists of two parts. One part urges the Government to implement a licensing regime for property management companies and the other requests the authorities to establish a Building Affairs Tribunal. In the following speech, I will first explain the grounds and justifications for proposing the whole motion on behalf of the DAB. Later on, other Members from the DAB will elaborate on various aspects of the motion.

Let me talk about the licensing regime first. In fact, this subject is not new in any way. The sector has made a similar request to the Government as early as in the 1980s, however, the position of the authorities was very clear, that is, they wanted the sector to exercise self-discipline. However, what is the result?

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

Late last month, the Harmony Property Management Limited was suddenly "folded" and there was suddenly a vacuum in the management of 46 private buildings under its management. Moreover, some small property owners complained that the Harmony Property Management Limited had defaulted on construction and service charges which were estimated to run into

\$6 million or \$7 million in total. In 2003, the Housing Management Agency Limited, which had been liquidated as a result of the Albert House case, was found to have owed 150 buildings nearly \$16 million in management fees, consequently, many small property owners found that their money had gone down the drain. In another case handled by me personally, a management company was eventually replaced by the owners' corporation (OC) concerned because of its particularly poor performance. However, the management company counteracted by claiming millions of dollars in severance pay for the employees working in each building under its management. What is more, despite the passage of two years, so far, the company still refuses to provide the relevant accounts. In the end, the owners' corporation had no alternative but to pay a large sum of legal fees to take legal action.

Such instances serve to highlight the existing problem, that is, in the absence of a regulatory mechanism, there are both good and bad elements in the property management sector and the standards vary greatly. Apart from causing a host of problems, in many instances, the accounts are in a shambles, and as a result, small property owners feel a great deal of anxiety.

Deputy President, many small property owners have toiled for the greater part of their lives in order to own a flat of their own. A property is the most important asset for most families. If there is no well-developed mechanism to ensure that property management companies in the market meet basic professional standards and ethics, how possibly can small property owners put their minds at ease and not be worried that the foregoing instances can happen to them at any time? Moreover, small property owners may not possess the relevant professional knowledge and it will be difficult for them to detect irregularities in their management companies, as a result, the crisis will snowball. If the Government does not take this matter seriously right now, this is tantamount to planting a time bomb for all buildings in Hong Kong. Should the bomb go off, it will be the numerous innocent small property owners in Hong Kong who will be victimized eventually.

In view of this, as early as 2004, when the DAB responded to the public consultation paper on building management and maintenance, it already requested in clear terms that the Government establish a regime to regulate property management companies. In addition, in the meetings held in the Legislative Council currently to scrutinize the Building Management (Amendment) Bill 2005, I have also urged the Government to establish a

licensing regime. Unfortunately, although many good proposals on improving building management are proposed in the Bill, the amendments are mainly changes to the details or clarifications of ambiguities in law. Other fundamental solutions such as a licensing regime have still not been dealt with.

In fact, the voices of the sector and the public are very clear. The Hong Kong Association of Property Management Companies Limited, whose members include the Hong Kong Institute of Housing, the Hong Kong Institute of Real Estate Administration, the Chartered Institute of Housing and the Hong Kong Association of Property Management Companies, has made clear that it supports the contents of my motion. In addition, according to a survey conducted by the DAB last month, 85% of the respondents believe that a licensing regime is "highly necessary" or "necessary". Such a result is only to be expected because as early as 2003, when the Government carried out a consultation on building management and maintenance, close to 90% of the respondents similarly supported the introduction of a licensing regime. Meanwhile, the sector also strongly supports the introduction of a licensing regime because, be it on the Mainland, in Taiwan or Korea, the modes of building management modelled on the Hong Kong experience some years ago have all developed further and implemented a licensing regime for management companies after studying the Hong Kong experience, whereas Hong Kong has failed to keep abreast of the time.

In view of this, little wonder that even the sector complains that the Government only requires OCs to hire management companies but does not regulate the quality of these companies.

Deputy President, insofar as licensing is concerned, the Government has indeed shown a great deal of hesitation and conducted one consultation after another. One of the reasons cited by it is the concern that small management companies will close down as a result. However, the DAB considers that in reality, the opposite will be the case. As long as small management companies comply with the law, they will surely benefit from the licensing regime. This is because in recent years, incidents of management companies going bust were reported in the newspapers from time to time. Small property owners were alarmed on learning about them. When choosing a management company, naturally, they prefer those that are reliable, so they prefer larger-scale management companies. As a result, small management companies have found

themselves to be even more disadvantaged in competition. After the introduction of a licensing regime, the public will have confidence in the whole sector. It is expected that owners of smaller buildings such as single-block old buildings and tenement buildings will prefer to hire management companies that provide services tailored to their needs. Since the cutting edge of smaller management companies lies in the flexibility and versatility of their services, they will surely have greater room for survival.

Of course, we cannot subjectively believe that a licensing regime is the panacea for all building management problems and that all would be well after the introduction of such regime. Our aim is only to solve the biggest regulatory problem facing the sector through the establishment of a licensing regime, however, when it comes to other sundry and unique problems, it will still be necessary to rely on other complementary measures.

Deputy President, next, I am going to raise the issue of establishing a Building Affairs Tribunal. This is because the nature of disputes relating to property management is diverse and complicated. Moreover, the amount of money involved is not really substantial and often, only several thousand dollars or tens of thousands of dollars are involved. However, according to the existing practice, the Home Affairs Department, to avoid accusations of siding with anyone, will always suggest that both parties seek legal advice on their own or shift the responsibility of resolving the disputes to the Lands Tribunal or the Small Claims Tribunal. However, as we all know, the waiting time for a case to be heard in the Lands Tribunal is very long and it will take a year or half a year before a case can be heard. However, building management must have continuity and there cannot be any vacuum. Therefore, the actual needs of service users are often not catered to. Moreover, since building management is becoming increasingly complicated, it is anticipated that disputes involving building management will only increase and the problem of cases waiting to be heard will only become more serious. Moreover, it is necessary to be legally represented in the Lands Tribunal and the cost is relatively high. For one thing, small property owners may not be able to afford it, and for another, the legal costs are often higher than the amount of money claimed, so in view of the uncertainty of winning a case, many small property owners prefer to take a pacifist approach or even just to put up with things and endure in silence. As regards the Small Claims Tribunal, for one thing, it can only deal with cases involving less than \$50,000, and for another, there is also the drawback of lengthy waiting time. This effectively deters small property owners and

members of OCs, who serve purely on a voluntary basis, from dealing with disputes in building management and such a way of thinking has dealt a direct blow to the eagerness of owners in taking part in building management.

For this reason, the DAB hopes that a Building Affairs Tribunal can be established under the principle of making things convenient and user-friendly to the public, so as to solve a host of problems that have arisen in building management, including water seepage on ceilings, recovering management fees in arrears, rental problems and disputes in owners' general meetings. As the name implies, the proposed Building Affairs Tribunal is specifically responsible for dealing with all disputes on building affairs that involve property owners, developers, OCs and property management companies. In order to simplify the procedures and reduce legal costs, we hope that the approach to be adopted by the Building Affairs Tribunal in handling cases should generally speaking be similar to that of the existing Small Claims Tribunal, that is, it is necessary to appear before the tribunal personally and no legal representative can be hired. In order to cover most of the cases relating to building management, we propose that the amount of money involved in cases handled by the Building Affairs Tribunal can be increased to \$300,000. For more complicated cases or cases involving larger sums of money, of course, they can still be dealt with by the Lands Tribunal or other Courts at a higher level. As regards the actual organization and composition of the Building Affairs Tribunal, the DAB believes that various sectors should be consulted before decisions are made.

The DAB believes that the establishment of the Building Affairs Tribunal will effectively establish a triage system for disputes relating to building management and in this simple, convenient and expeditious way, not only can the increasing number of diverse disputes be handled more quickly, moreover, it will also indirectly encourage more owners to take part more actively in building management.

In fact, according to the survey conducted by the DAB last month, close to 80% of the respondents expressed support for the establishment of a Building Affairs Tribunal. In addition, the views of the sector collected by the Government in the consultation it carried out earlier, for example, the views of the Hong Kong Institute of Surveyors, all indicate support for the establishment of a Building Affairs Tribunal. In view of this, the DAB urges the Government to be amenable to good advice and finalize this proposal as soon as possible, so

as to address the present undesirable situation in dealing with disputes relating to building management.

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

Miss CHOY So-yuk moved the following motion: (Translation)

"That, in order to enhance the existing building management standard, avoid malpractices and effectively deal with disputes involving the management of private buildings (including those public housing estates and Home Ownership Scheme courts the management of which has been outsourced to private management companies), this Council urges the Government, apart from clearly defining in the Building Management Ordinance the powers and responsibilities of the parties concerned, to expeditiously implement a licensing regime for property management companies to strengthen their regulation and, at the same time, establish a Building Affairs Tribunal to streamline and speed up the handling of the increasing disputes among individual owners, developers, owners' corporations and property management companies."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Miss CHOY So-yuk be passed.

DEPUTY PRESIDENT (in Cantonese): Five Members will move amendments to this motion. The motion and the five amendments will now be debated together in a joint debate.

I will call upon Mr Tommy CHEUNG to speak first, to be followed by Mr Alan LEONG, Mr Albert CHAN, Mr James TO and Mr LEUNG Kwok-hung; but no amendments are to be moved at this stage.

MR TOMMY CHEUNG (in Cantonese): Deputy President, the question under discussion today can be divided into two parts. The first is about a licensing regime for property management companies and the other is an arbitration mechanism for building affairs. In proposing an amendment on behalf of the Liberal Party, I mainly want to examine how best the existing mechanism can be

improved to enhance protection for the rights of small property owners and solve the problems relating to property management, so that each household can have a cosy home to live in.

First, I wish to discuss the issue of a licensing regime for property management companies. At present, there are over 43 000 commercial-residential buildings in the territory, including those built under the Home Ownership Scheme. This figure does not include public housing estates, the management services of which have been outsourced. For the majority of them, property management companies have been hired to carry out management, so it can be said that property management is one of the services closely related to the people.

However, at present, property management companies do not have to apply for any licence for property management. If one wants to operate a property management company, one has to apply for a guarding service licence from the Hong Kong Police Force and obtain a business registration certificate. In other words, apart from a basic guarding service licence, there is no other special requirement.

However, as the sector itself has also admitted, there are about 1 000 property management companies in the sector and good ones and bad ones are intermingled. In the past, instances of sudden closures of property management companies and defaults of payment had occurred and there were strong reactions in society. Instances that caused a furore include the one involving the Housing Management Agency Limited, which was responsible for managing the Albert House in Aberdeen and a more recent one involving the Harmony Property Management Limited, which closed down at the end of last month. These instances have all made small property owners suffer losses.

Therefore, with regard to property management, we consider it necessary to enhance the transparency of the decision-making process and even the finances, as well as stepping up regulation. In particular, modern property management is not just confined to security but also the repairs, management and maintenance of a building, as well as offering various types of recreational activities to residents and the provision of a host of other tailor-made services to residents, so it is a highly professional sector covering a large scope. Therefore, it will be a timely move to issue specific property management licences to property management companies, specify the requirements in various

areas and impose appropriate control. However, I wish to stress that the licensing regime should be kept simple and one should by no means complicate matters by requiring companies to apply for different licences from various departments, as in the case of a supermarket having to apply for different licences from a host of government departments, that is, to require property management companies to obtain a guarding service licence, then require them to obtain a management licence.

In fact, in 2004, when the Government published the consultation paper on building management and maintenance, the Liberal Party already said that in order to step up regulation of property management companies, enhance confidence among property owners and prevent the recurrence of instances of sudden liquidation similar to that involving the Housing Management Agency Limited, the authorities could consider introducing a licensing regime for the property management sector.

However, as I have said just now, property management is becoming increasingly professional and only the sector itself has the clearest idea of the operational problems involved. Therefore, when studying a licensing regime for the sector, we believe that it is absolutely necessary for the sector to play a part in devising the regime, so as to avoid the scenario of outsiders directing the insiders. Only in this way can the rights of small property owners be effectively protected and better property management services provided.

Deputy President, on the establishment of a Building Affairs Tribunal, I believe Members all know that disputes involving buildings are arguably diverse in nature and the issues involved are also quite complicated, for example, disputes relating to different interpretations of the deed of mutual covenant (DMC), those between residents of upper-floor and lower-floor flats as a result of water seepage, those relating to the levy and use of management fees and maintenance and repairs funds, ways to deal with the keeping of pets, environmental nuisances such as noise, the use and conversion of public areas in a building, and so on.

The disputes can take various forms and they can involve various parties. It can be one between small owners, between small property owners and major property owners or between an OC and a property management company, so one can say that they are complicated and numerous.

To handle various types of disputes over the management of buildings, the parties concerned can resolve the disputes by referring them to the Small Claims Tribunal or the Lands Tribunal. The Small Claims Tribunal can only handle claims involving a maximum of \$50,000 and it cannot deal with cases involving sums which exceed the upper limit only slightly, even though they are not very complicated cases.

As regards the Lands Tribunal, which is specifically responsible for handling disputes in building management, at present, there are four members on it and apart from handling disputes in accordance with the Building Management Ordinance, their scope of arbitration also covers a large number of appeal cases involving rates valuation. As a result, the waiting time for cases rose sharply from 24 to 48 days on average in 2002 to 31 to 90 days on average in 2005 and the number of backlog cases from previous years is as many as 13 000, so it can be seen that the progress in handling cases of disputes in building management has left much to be desired.

In cases referred to the Lands Tribunal, both sides can have legal representation. However, for small property owners, if the other side has hired a lawyer but they do not have any lawyer to assist them, they will find themselves at a disadvantage. If they hire a lawyer, they are worried that even though they have paid legal fees, they cannot ensure victory and even if they win, what they will gain may not be enough to cover the solicitor's fees. This often puts small property owners in an impasse and a bind.

Therefore, the Liberal Party believes that the most important thing is to establish a mechanism that can arbitrate in building affairs speedily and effectively, for example, by speeding up the time required by the Lands Tribunal in dealing with cases, simplifying the procedures and considering increasing the number of Judges in the Lands Tribunal.

Of course, for disputes which are not so complicated and involve smaller amounts of money, consideration can be given to allowing both sides to state their case directly before the Judges and both sides should not be allowed to hire lawyers to represent them. The results of arbitration should also be legally binding. That is to say, it is not necessary to establish a Building Affairs Tribunal in order to achieve the same results. The advantage is that duplications in structure and efforts can be avoided, while an expeditious channel will become available to assist small property owners in need.

Deputy President, as regards the other amendments, the Liberal Party understands that due to the constraints imposed by the DMC, sometimes, small property owners may feel very helpless and find the circumstances to be most unreasonable. For example, they find that they have to face many hurdles if they want to replace the manager specified in the DMC or the property management company.

If we reduce the proportion of owners required in making such decisions significantly with a view to dealing with an unreasonable DMC, the Liberal Party holds that it is necessary to proceed carefully. As the saying goes, you cannot have your cake and eat it. If the manager specified in a DMC can be replaced easily with the agreement of only a certain proportion of owners, that is, less than half of the property owners, or the manager specified in a DMC can be replaced frequently, this will have an adverse effect on the management company in terms of long-term investment or recruitment. More importantly, in the event that other property owners voice their opposition, this will trigger another major dispute.

At present, a Bills Committee is scrutinizing the Building Management (Amendment) Bill 2005. The Liberal Party believes that the Bills Committee will have in-depth discussions and identify an appropriate mechanism for amending unreasonable DMCs.

As regards the amendment proposed by Mr LEUNG Kwok-hung, the Liberal Party will oppose it because we consider it not advisable to establish a separate organ with investigation and prosecution powers under the Home Affairs Department as all disputes relating to building affairs should still be handled through legal channels.

Deputy President, I so submit.

MR ALAN LEONG (in Cantonese): Deputy President, in recent years, various types of incidents relating to buildings, ranging from the spalling of concrete off the external walls of buildings, the collapse of canopies, to the more than 70 cases of aluminum windows falling onto the streets that occurred last year and incidents relating to water pipes and electric wires, have occurred from time to time. However, apart from these accidents which have come to light, there are

also some hidden figures relating to building management that constitute a worry in Hong Kong. According to a report in the latest issue of ICAC Post published by the Independent Commission Against Corruption (ICAC), the ICAC received 1 400-odd reports of corruption involving private companies and 40% of them involved building management.

In the context of as many as 42 000 private buildings in Hong Kong nowadays, perhaps the aforementioned corruption problem relating to building management has not yet reached a very serious state, however, given the dense population in Hong Kong, we have already seen too many accidents resulting from the lack of proper repairs and maintenance of buildings. If we do not begin to do something about building management in a timely manner by fostering a property management culture characterized by integrity, clear powers and responsibilities and high transparency and allow the problem to deteriorate, it is likely that there will be more and more poorly managed buildings in disrepair becoming time bombs that pose threats to the lives and safety of property owners, tenants and even passers-by.

Deputy President, I wish to take this opportunity to thank Miss CHOY So-yuk for moving the original motion, so that the Legislative Council and members of the public who has all along been concerned about the quality of building management can have an opportunity to discuss the issue of building management in earnest. The Civic Party also agrees with and supports the proposals to expeditiously implement a licensing regime for property management companies and to establish a Building Affairs Tribunal.

The existing regulatory regime for property management companies mainly relies on self-discipline and the Hong Kong Association of Property Management Companies Limited (the Association) is responsible for supervision. However, of the approximately 900 property management companies in Hong Kong, only 77 have joined the Association as full members and another nine are affiliated members of the Association. Although the market share of these member companies in the property management market is as high as 85%, the property management companies for 15% of the buildings have still not joined the rank of those that exercise self-discipline in the sector.

In fact, most of the buildings comprising the 15% of buildings are old tenement buildings. Many of the property owners of these buildings are advanced in years, have little means or little understanding of their own rights.

However, since the property management companies hired by them are not subject to the regulation of the regulatory regime in the sector, the situation of these buildings is a particular cause for concern. In the past, many backroom deals and conflicts of interest relating to repairs and maintenance contracts for these tenement buildings have occurred. The Government must target the management of these buildings and step up its regulation.

Deputy President, moreover, the small number of members in the Association and the high concentration in market share probably also reflect the undesirable consequences of unfair competition in the absence of comprehensive regulation. Since the Association stipulates that a firm or corporation is eligible for consideration as a full member only if it can satisfy the Association that in the case of a firm, a partner of the firm has over five years' proven property management experience or, in the case of a corporation, the corporation has over two years' experience in managing properties in Hong Kong; and the firm or corporation is managing over 1 000 residential units, or over 30 000 sq m of industrial space, or over 10 000 sq m of commercial space, this is a very high threshold that is obviously designed to exclude small companies. Moreover, this also induces property owners with better means to favour member companies when choosing management companies, thus further aggravating the over-concentration in the property management market.

While the Government regulates the property management market, it should streamline the market structure so that small-scale companies with the same level of professional competence and ethics can find opportunities and room for survival. Therefore, if a licensing regime is implemented, consideration should be given to imposing a lower level of regulation. I propose that the focus should be on laying down requirements designed to prevent conflicts of interest and enhancing financial transparency, for example, to lay down clear guidelines and penalties for outsourcing and procurement, instead of adopting the experience of a company and the scale of its operation as the criteria in issuing licences.

Deputy President, the Civic Party also very much supports the proposal to establish a Building Affairs Tribunal. This is mainly because there are indeed too many disputes involving property management and quite a number of these disputes involve safety issues, so they cannot drag on for too long. In view of the about 600 000 illegal structures in Hong Kong and thousands of incidents of water seepage and similar incidents each year, it is really difficult to deal with

them effectively and expeditiously by relying on the resources of the Lands Tribunal and Small Claims Tribunal alone. The Hong Kong Institute of Surveyors proposed two years ago that a tribunal for this purpose be set up, so as to ascertain the responsibility in disputes relating to property management by following the principles of expeditiousness and low legal cost, as is the case in the Small Claims Tribunal. The Government should finish the relevant study as soon as possible and make preparations to establish this Building Affairs Tribunal.

In fact, it is not in any way difficult to conceive of the advantages of such a Building Affairs Tribunal. If the Judges in it deal with disputes relating to OCs every day, in time, they will become very skillful with the accumulation of experience and they will be better versed in handling and solving problems because they have a better understanding of the actual operation and actual difficulties encountered, so there is no need for the people involved to explain matters all over again on each occasion, thus affecting efficiency.

Deputy President, in my amendment, I propose that a mechanism be established to amend extremely unreasonable provisions in the DMCs. In fact, this proposal owes its origin to Mr James TO's amendment. In adding this item to my amendment, I only hope to express my support for the proposal made by Mr TO. Therefore, I do not intend to explain in any detail here, so as to avoid repeating what Mr TO's proposals.

Finally, we believe that in our debate, apart from paying attention to the interests of property owners in multi-storey buildings, we must not overlook the rights of owners of house developments either. The Government pointed out in the scrutiny of the Building Management (Amendment) Bill 2005 by the Legislative Council that the Bill seeks to facilitate building management of multi-storey buildings. As house developments involve more complicated legal issues, for example, the difficulty in defining "units" and "common parts", it would be difficult to deal with these problems by means of the existing legislation and it may be necessary to make a separate law.

We understand that the Government's wish of not to defer making amendments to the Building Management Ordinance due to the need to study the introduction of a new piece of legislation, however, I hope very much the Government will understand that house developments also face many of the problems encountered by property owners of multi-storey buildings. Precisely

for this reason, it is all the more necessary for the Government to expedite the establishment of a licensing regime for property management companies so as to lay down quality management benchmarks that all companies in the sector, irrespective of their scale, have to comply with as soon as possible and owners of house developments with the need can consider improving management through the appointment of property management companies. Meanwhile, the Government should also complete the legal framework for the establishment of a Building Affairs Tribunal and for the management of house developments as soon as possible, so that the quality of building management in Hong Kong can be improved in a fundamental and comprehensive way.

I so submit, Deputy President.

MR ALBERT CHAN (in Cantonese): Deputy President, the subject of today's motion has been discussed in society and in the Chamber for some 10 to 20 years and the number of amendments shows that various political parties are very concerned about this problem. The concern shown by Members and political parties is far greater than that of the Government, particularly in respect of the proposals on property management and a tribunal mechanism. A subcommittee under the Legislative Council has studied this matter for three years and made many recommendations to the Government. Certainly, the Government has accepted some of the recommendations and it is in the process of amending Chapter 344 of the Laws of Hong Kong. However, when it comes to many recommendations of a fundamental and very important nature, the Government keeps dragging its feet and among them, the recommendations on introducing legislation to regulate property management companies and that relating to a tribunal have still not been taken on board.

In fact, the small property owners and the ordinary members of the public are in a plight. After toiling for most of their lives to save enough money to pay the first installment for a flat in a building, they have to pay the mortgage. There is hardly any need to mention the problems in buying a flat, which include the unfair contracts in buying uncompleted flats and there are a lot of deceptive, incomplete or misleading information on such flats, so small property owners do not have any protection. For one thing, the Government is biased in favour of the interests of consortia and big developers and there have been accusations of collusion and the transfer of benefits for many years. After small property owners have bought their flats, their nightmare has only begun. What follows

next is that small property owners are bullied and oppressed by management companies affiliated with the developers and the misery is really indescribable. The problems include the quality of the flats, items that do not conform to the specifications, water seepage and the sudden collapse of an entire cupboard in the kitchen. However, the management company concerned refuses to assume responsibility for these problems. Moreover, the particulars of the management expenses are also unclear. I intend to spell out the 10 cardinal sins in management here and I consider them just as the original sins in religion. These sins came about because the Government is biased in favour of consortia. As a result of such original sins, small property owners and ordinary members of the public have to endure for their entire lives the misery caused by the collusion between the Government and businesses and the Government's bias for major developers. If the Government is not biased in favour of major developers, this problem can in fact be solved.

The first sin is the bias in favour of developers. All of us can see the unfair clauses in the DMCs. Developers can appoint their subsidiary management companies to manage their housing estates. To some extent, this is a permanent arrangement. Although it is said that a new agreement will be signed every two years, if the management company does not resign, it is necessary to secure agreement from 50% of the title ownership before it is possible to replace the management company. This is in fact biased completely in favour of developers and the property management company concerned will also show particular favour to the developer. Often, after new buildings have been completed, a management company will not ask the developer to pay the management fees for the vacant units it owns and will manage the car parks and shopping centres for it free of charge. Furthermore, the water and electricity bills incurred by it will be paid with the management fees. Such misdeeds are innumerable.

The second sin is the bullying of small property owners. When a management company dislikes certain small property owners, it will instruct their lawyers to issue letters and then take legal action by filing writs. The legal costs are not borne by the management company but paid out of the management fees. Such despicable behaviour occurs all the time and, only yesterday, I met with some small property owners from a housing estate, who related to me the despicable behaviour of these major developers, that is, the companies belonging to the richest man in Hong Kong.

The third sin is that management companies condone or carry out acts that violate the DMC. In one case, the litigation has continued for seven years and has still not been concluded. In this case, it is stated in the DMC that the management fee for the shopping centre is \$0.8 per sq ft but for more than a decade, the commercial units in the shopping centre belonging to the developer have been paying only \$0.08 per sq ft in management fee. When queries were initially made, the management company only said that this was due to a typographical error in the DMC and it refused to pay the management fee at the rate of \$0.8 per sq ft. The litigation has gone on for seven years and the management company has continuously caused delays. This is a violation of the DMC.

The fourth is poorly managed accounts. In one case, a sum of several million dollars disappeared all of a sudden for no apparent reason and there were no dates on the relevant receipts. When the property owners asked the management company for explanations, it refused to provide any information or evidence. As regards gratuities for managers or other expenses on works, often, any request to account for them is turned down. If one wants to carry out an investigation on the expenses incurred, the management company will agree to it, however, property owners have to first pay the fees for the accountant in advance. In that event, an accountant will look into the expenses together with the property owners but the fees charged may amount to \$3,000 per hour. However, on concluding the investigation, the result may not be handed to the property owners.

The fifth sin is the loss of information. The management company in question was a well-known one. When the property owners wanted to obtain a plan, it said that it did not have any and did not know its whereabouts. After an OC was established a few years later, it requested a look at the information on the repairs and maintenance carried out in the past or the units which had complained about water seepage, however, the management company said that the relevant information had been lost.

The sixth sin is to make backroom deals. A lot of contracts are awarded to the subsidiaries or sub-subsidiaries related to the management company or to a consortium. Be it the cleansing company or the security service company, they are all its affiliated companies and a similar situation of making backroom deals can also be found in the operation of shuttle bus services. There are innumerable instances of this nature.

The eighth is black-box operation. These management companies can decide on its own what professionals to hire and the kind of contract to be offered when carrying out works. Even though there is an OC, it will not be notified before the contracts are signed and sealed. If an OC wants to obtain information on the income and expenses or any receipt, the management company concerned will not provide any.

The ninth one is to hoodwink people and create *fait accompli*. It is only after a lot of matters have been completed that one learns about them in the annual accounts. If one wants to ask for more information, the management company will simply say that it does not know anything. In sum, the money has been paid and if one wants to pursue further, no account or explanation will ever be given.

The tenth and the most serious problem is the lack of regulation. The entire way in which the management companies operate, the DMCs and the management contracts are all biased in favour of management companies. Ultimately, a management company can cite the rights conferred by management contracts or the DMC and refuses to account for anything. If one wants to take legal action, sometimes, even the lowest possible legal fees will run to several million dollars, so even though an OC has been established, it still dares not take any legal action against the management company lightly. Therefore, in these circumstances, even though the Government knows full well — in fact, the District Offices know about these problems because if such problems occur at the district level, of course, people will first seek assistance from the local District Office — in the end, the District Office can only say that it is very sympathetic but cannot provide any assistance and it will ask the OC concerned to look for a lawyer on its own. The Government encourages property owners to establish OCs but does not provide any support afterwards, whereas the law is totally biased in favour of this kind of consortia. In fact, the Government has proposed the introduction of legislation to regulate property management companies a long time ago. As early as 1988, the Government established an advisory committee and if I remember it correctly, it was CHUNG Pui-lam who headed the advisory committee. After carrying out consultation for a period of time, the major property management companies at that time and the professional bodies representing property management companies all expressed their full support for the Government in introducing legislation to regulate property management companies. The government proposal to introduce legislation to regulate

property management companies even preceded the government proposal to introduce legislation to regulate property agents. However, 18 years down the line, today, the Government still does not have any intention to regulate property management companies.

As far as I can see, in our great Motherland, the Eighth Executive Meeting of the State Council on 28 May 2003 passed a piece of legislation relating to the regulation of property management companies and the relevant properties. The relevant decree came into effect on 1 September 2003 and section 24 of the regulations provides that "The state advocates that the construction entity shall select a realty management enterprise with the corresponding qualifications through bid tendering pursuant to the principle of separation of real estate development and realty management.". Our great Motherland already stipulated in 2003 that the developer and management company of a property must be separated instead of being the same company. Under the "one country, two systems" principle, we belong to the same country. Secretary, we have now violated the State directions. We still condone our developers in hiring management companies controlled directly by them to carry out property management and engage in deceptive and oppressive practices. To some extent, this is to pilfer and steal the money and assets of many small property owners. Moreover, concerning the point on inviting tenders, this is not how the situation is like now, instead, the situation is that of making backroom deals and the District Lands Offices are being completely partisan. As long as developer prescribes such a power in the DMC, it can hire its own company to carry out property management by making backroom deals. Our great Motherland has laid down clear provisions in this regard in regulation 24 and I guess it is LEUNG Chun-ying who taught it to do so. LEUNG Chun-ying manages a lot of properties on the Mainland and in the past, he has managed a lot of real estate on the Mainland for China. However, as a member of the Executive Council, he has not given any instruction whatsoever in this regard in Hong Kong. Therefore, I really hope that the Government can really wake up and firstly, it has to follow the concept adopted by our Motherland and introduce the practice of separation; secondly, it has to do justice to small property owners. Deputy President, if the Government continues to be so stubborn and ill-informed, or continues to transfer benefits to consortia or condone consortia in colluding with one another to bully small property owners, I believe the popularity of the Government, particularly that of the Secretary, will not be good. For the sake

of small property owners, Hong Kong and public interest, I hope the Secretary will introduce legislation as soon as possible (*the buzzer sounded*).....

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

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

MR JAMES TO (in Cantonese): Deputy President, I have recently been appointed Chairman of a Bills Committee concerning a bill on building management. The bill has been scrutinized for two years very intensively and in great detail. As the Chairman, I have to attend every meeting and found that the problems are very serious and there are numerous problems to be solved.

Mr Albert CHAN has just mentioned 10 sins. I fully agree that such phenomena are true. However, when regulation is imposed, what should be subject to regulation? I also agree to impose regulation. In 1991 when Mr MAN Sai-cheong was a Member of the former Legislative Council, he already mentioned the issue. Actually what should be regulated? I would like to discuss it in detail because I see that colleagues have not done so so far.

First, what are we talking about when we say regulation and licensing is necessary? Do we mean capital requirement? This is one consideration. Why? It is because of the huge funds. Take the large housing estates as an example. The funds of these large housing estates will be more than \$30 million which is all in cash. Let us imagine a shell company with a nominal capital of \$2 dealing with a fund of tens of millions of dollars. This is not in proportion. However, if a capital requirement is imposed and the requirement is set at a very high level, a phenomenon may arise, and that is, all small companies will close down. If not, a classification system should be implemented, right? If the capital of these companies has reached a certain level, they will be allowed to manage buildings with a certain number of flats. Alternatively, other requirements will be imposed. Am I right? Otherwise, companies with a capital lower than that stipulated can only manage single buildings.

Regarding a licensing regime, should a company licence or personal licence be issued? If we demand that everything should be done in a professional way, then a single building may really have to.....how many titles are required? How many manager licences are required? Membership of what number of professional bodies is needed? For single buildings, it is very simple because there are only 10 flats. But a management company is still required. The households will not dispose of the garbage by themselves. So, there cannot be too many requirements.

Moreover, what are we trying to regulate? Should we regulate the operation? Should we check whether the directors have criminal records or decide what professional qualifications should be possessed by them? If they really have criminal records, when their licences have been revoked, should the directors or individuals be prohibited from taking up certain posts in other companies? Besides, when we mention regulation, does it mean that these companies or individuals should take out professional indemnity insurance?

Besides, some colleagues mentioned the prevention of conflict of interests. For instance, regarding the tender procedures, should the subsidiaries or sub-subsidiaries of these management companies be allowed to bid for their own projects? Perhaps, the procurement of goods and services is made on a one-stop basis, should this be allowed? They may give a different version of story, saying that the price is particularly cheap. What should be done then?

Recently, a member of the public, after hearing that I would amend this motion, raised a suggestion with me. I think it worths consideration by the Secretary. The citizen asked if it was possible for each building to put its fund in the bank on its own. For fear that the management company might abscond, he asked whether the buildings' funds could be put together in one place. Some people may say that caution is in order. Where should the money be put? For instance, would it be better if the money is entrusted to the Government? Or it may be entrusted to a government fund because the Government will not close down or abscond. Where did such an idea originate? Let me cite the example of central clearing. Small investors want to buy shares but fear that the securities companies may close down, as a result, the central registration system has been set up. For instance, a building has deposited \$3.4 million in a central fund. The money can be withdrawn after a proper certification process. In doing so, the property owners need not be afraid that the management company may abscond. Am I right? Of course, one should consider that as the Government has so much powers, if it holds the deposits and something has

happened to prompt the Government to make use of the money, what should we do? Moreover, certification by the Government will need a lot of manpower. However, for the sake of safety, this idea merits our consideration.

Besides, we have to consider some acts of the management companies. For instance, before they are dismissed or when their term will soon expire, can they, on behalf of the owners, sign a contract with an effective period longer than their own term through some procurement methods? Can they have such powers? According to the law of contract, they may not have such a power. However, if regulation is imposed, should such acts be subject to limitation as well?

I have roughly mentioned seven or eight areas which are very difficult and complicated. I have looked up old records and found that not many colleagues have discussed these areas in detail. If there is a brewing on this issue, I hope colleagues can express their views freely in the Bills Committee. All sectors of the community can also express their views.

Regarding my amendment, the focus is mainly on two points, one of which is to modify unreasonable or extremely unfair provisions in the deed of mutual covenant (DMC). This is nothing new. I remember a very interest remark by Secretary David LAN: "Everything under control." Mr Albert HO had debated with him at that time. The concept at the time was very simple. There are many problems left behind by history. For instance, the share of ownership of a unit, the rights entitlement and the management fees payable are not in proportion to the duties, powers and responsibilities. We have discussed these problems for a long time. The new DMCs, which are subject to restrictions by the Land Registry, cannot be too unreasonable. But for the old DMCs, such unfair situations still exist and examples are numerous. So, we hope that a mechanism can be established with a clearly defined area. The DMCs can be amended only when the amendments are proposed by a majority of property owners with the approval of the Lands Tribunal or some judicial mechanism. Moreover, areas which can be modified by the Court should be clearly stipulated. With these safeguards, I believe the problem of the freedom of contract being seriously undermined as mentioned by the Liberal Party may not be valid.

Lastly, I would like to talk about the sub-deed of mutual covenant (sub-DMC). More and more shopping malls are subject to sub-DMCs in which

there are common parts under the management of another company. However, the big landlord of the shopping malls does not hold any title after selling the small units. Despite that, the big landlord has still retained the management right and some residual interests which will be held forever. This situation is exactly the same as that a decade ago when we discussed the principal DMC. At that time, we pointed out the unfairness of the fact that the developers were able to manage the buildings forever after completing the projects and selling all the flats. The only difference is that the principal DMC, concerning the whole building, was our concern at that time. Now we are talking about sub-DMCs which may be related to shopping malls. However, we are also talking about the situation where the developer can deprive the small property owners of the management right to certain areas through various restrictions after selling all the units. In my opinion, as we had solved the problem concerning the principal DMC a decade ago although the solution had not been applied to sub-DMCs due to some technicalities, I hope the Government can carefully study the problem and put forward a proposal to deal with such an unfair situation expeditiously.

Finally, I would like to talk about Mr LEUNG Kwok-hung's amendment. I reckon that not many colleagues will discuss his amendment today. They will just discuss the amendment briefly and then dismiss it right away. However, in fact, if someone says that problems concerning building management can be entirely dealt with by the police or the ICAC, I do not think it is sufficient. Of course, should all matters be dealt with by the District Offices? We should bear in mind that the current legislation has given investigatory power to the District Offices more than a decade ago. However, as far as I know, the District Offices have never invoked such investigatory power, not even once, or adopted any mandatory measures. So, no wonder Mr Albert CHAN was so angry just now and said that the Government was biased in favour of large consortia. People do have such suspicions. We have, on many occasions, requested the District Offices to exercise their investigatory powers. But no investigation has been conducted. I can only say that I regard Mr LEUNG Kwok-hung's statement as a general inclination, hoping that the Government can exercise the investigatory power in a rational manner to investigate the management problems in buildings so that the truth can come out from the criminal offence perspective and the property owners' rights can be protected.

MR LEUNG KWOK-HUNG (in Cantonese): The current situation is in fact a historic problem. Regarding building management, the Government has created the owners' corporations (OCs) to meet the need of society, but turned a blind eye to the problems. Now numerous problems have occurred. Today, many Members have spoken on this issue in response to the complaints of the people or the voters. We therefore spoke on their behalf. This is indeed lamentable. In face of the government officials, or the unreasonable matters rather, day and night, they have suffered a lot and we should appreciate their dire situation because they cannot refuse to go home. From their perspective, Hong Kong is not a land of peace and happiness. This is really a serious matter. If one encounters problems in his job, he can change his job. If the job is unsuitable for him, he can quit it. A Legislative Council Member who wants to give up such a position can find a better job. However, the situation is different when one needs to go home to sleep. Whenever they go home, they face a great ghost.

In fact, I can use a common metaphor to describe the situation. The British Hong Kong Government provided a "life-saving straw" to itself and other people at that time and said, "What you have to do is to grasp this life-saving straw. It seems that you are drowning now." But it is only a strand of duckweed. It does not matter even though it is duckweed. You can swim if it cannot save you. But the "life-saving straw" is in fact a "poisonous vine" which will suddenly turn into a rattan and twist around people's limbs. As a result, people fell into the sea. This is a fact.

I have received numerous complaints. I have also mentioned an old woman who was bullied by an OC. The Tai On Building is really the black spot of the whole territory. I was almost beaten when paying a visit there. The old woman can no longer live there because a charge has been registered against the title deed of her flat after losing a lawsuit. One day, I accompanied her to the Lands Tribunal. At that time, she told me she really wanted to die. But I said, "Granny, do not be afraid. You can apply for CSSA and public housing. I will do my best to help you." She is still alive. But we have to consider one point. That is really a "poisonous vine". If the granny is in such a dire situation because of her trust in the system set up by the Government at that time and the current system, it is tantamount to committing suicide.

I have proposed a so-called amendment. What Members said is right. This is not an amendment but a declaration of stance. We just express our

views because the Government basically possesses such a power. The problem is that different policies have been formulated by different departments which have done nothing. Why, Secretary? This is really a matter under home affairs. Some people said that the Secretary had nothing to do. Secretary, do you understand that? Even though the equestrian events will be held in Hong Kong and be all the rage at the moment, it is tantamount to adding a diamond brooch on a glamorous gown. However, if the Secretary can really solve the problem, it is really strong governance for the benefit of the people.

What I mean is that I am holding some papers about a very simple case, a minor case rather than a major one. It is about an OC which refused to convene a meeting although 19 requests had been made for that. Apart from the signatures of 5% of the property owners, 19 requests have been made. Nonetheless, no meeting was held. The small property owners contacted the OC which then told them to solve the case in Court. But they might lose the case. If they lose the case, who will pay the compensation?

So, what approach is adopted by the District Office? Under general circumstances, a District Office considers itself a third party. I think this is wrong. Of course, I cannot say that we should bear ill will against the OCs or management companies. But the problem is that some people are at a disadvantaged position, namely the small property owners. As in the case of anti-smoking legislation, we have enacted such a piece of legislation because some people will inhale secondhand smoke and are helpless and innocent. We have to save them. If the District Office runs its business in such a spirit, it can do more things. In other words, its staff designated for such duties should conduct an investigation and have suitable power to penalize those who have obviously violated the law or the stipulations in the DMC. This is the purpose of my amendment. In fact, my amendment is proposed purely for discussion. If the Secretary has heard our views, or other Members have any good ideas, they should talk to the authorities because they are dealing with the amendments to Cap.344.

On this issue, I would like to say that some small property owners have been victimized while most of the developers which I have contacted are really providing a one-stop service. After the developers have sold the properties, the properties will be managed and exploited by them long term. If this legislation is not amended, no remedy can be made. How can we get the consent of 50% of people?

In addition, because of private ownership, these people cannot post up banners, notices or distribute leaflets at their residence. One day, I went to a building and was queried angrily by a person who seemed to be a dominant representative of the OC or member of the management committee. "Who are you?" he said. "Who am I? I am a man. Can a man go in?" I replied. He then reluctantly let me in. He was in such a bad manner — although I was so fierce, I was treated like this. Had it been some ordinary property owners, could they be alive? They may be assaulted and carried away, which is a mainland jargon, to the public security department on the allegation that they have created a disturbance.

So, the authorities should make some change in respect of this problem. In other words, the threshold for changing a property management company should be lowered in order to make the law enforceable. Even if I request the authorities to enforce the law, it would be in vain because the authorities have created a straitjacket for themselves and been bound by it. So, on this issue, I absolutely hope that they will — what I say is very simple — amend the outdated legislation so that the investigatory power and executive power can be separated and these powers can be exercised. Otherwise, the department is a powerless department, a toothless tiger.

One day, I went to a District Office. I could see that the staff there did not have any views. I saw someone pushing a woman of the other party and a fight was imminent. But the police officer standing at the corner remained silent. The staff of the District Office said that they did not see any woman being beaten. When all of them had turned around, she was beaten. Later she asked me, "Mr LEUNG, did you see me being beaten?" I said, "Yes, I did. Do you want me to be the witness to prove that someone has been beaten?" However, the police and the staff of the District Office said that they did not see anything. I really do not want to be cross-examined in Court as if I were a liar.

So, according to my experience, the District Office has not allocated any resources to assisting these helpless property owners who were encouraged to form the OCs in accordance with the legislation. This is certainly administration by a bad government, the same as the policy on community radio stations on the agenda which will be discussed later. The Government, after enacting the legislation, has not plugged the loopholes according to the situation and the time. As Mr James TO said, the Government has not exercised its executive powers as it should have, thus resulting in the problems we discuss today.

In fact, many property owners have told us, "'Long Hair', 'Honourable Long Hair', please tell the Government we have no money to enter in a lawsuit and we are not fierce enough. We have no alternative." They are those who are "devoid of three things", just like the people in the Mainland. So, I hope the Secretary can really exercise the powers vested in him in order to help the ordinary citizens. I hope Members can remind the Administration that it should regard the rights of the people as the first priority rather than the interests of the consortia. The consortia should not be allowed to victimize the property owners like tigers. I hope we can pass an improved motion for compliance by the Government. Thank you, Deputy President.

MR WONG KWOK-HING (in Cantonese): Deputy President, endless problems have emerged in private building management in Hong Kong. I have dealt with many such problems. Recently, I have tackled a case concerning abuse of power by the big landlord of an old-style private property. Under the control of the big landlord, the OC concerned refused to change its composition. Moreover, it passed a resolution with its majority votes for major projects with the costs being shared by the small property owners, thus creating an extremely unfair situation. The Home Affairs Department has turned a blind eye to these matters and offered no help. Worse still, although the property owners of the building requested a meeting with the District Officer one year ago, no arrangement has been made. I hope the Secretary can pay more attention to this because it is most unreasonable indeed. In my opinion, the Home Affairs Department is duty-bound to help the OCs.

Apart from the problems faced by small property owners, the property management companies have also encountered all sorts of problems. In 2003, a property management company closed down and it had provided management services to around 100 buildings and the funds involved were more than \$16 million. The incident adversely affected numerous property owners. The Building Management (Amendment) Bill 2005 (the Bill), which was submitted to the Legislative Council last year and is under scrutiny now, has proposed measures to plug a number of loopholes. It is stipulated in the Bill that management fees received from the OCs should be deposited in a separate bank account and not allowed to be mixed with the capitals of the management company in order to protect the interests of the property owners. Despite that, these are merely piecemeal solutions and comprehensive regulation is still lacking.

At present, property management companies in Hong Kong can run a business after applying for a business registration. However, we should note that these management companies may handle millions of dollars of management fees every month and the rights of numerous owners are involved. How can the owners set their minds at ease if there is no regulation by law? Some management companies' modes of operation are not illegal but inappropriate. But unfortunately, the owners do not have any complaint channel because there is no regulation imposed by law. When browsing the website of the Building Management Resources Centre of the Home Affairs Department, we can see that many areas, such as fire safety equipment, registered electric services and security services are regulated by legislation. Even plumbers and electricians who charge one hundred dollars or less per visit are required to be licensed and subject to regulation by law. However, management companies which receive millions of dollars in management fees from the owners are not regulated and not licensed. This is hardly acceptable.

The Government has not enacted any legislation to regulate management companies and the industry itself has not laid down any rules of self-discipline. The industry has set up the Hong Kong Association of Property Management Companies Limited (the Association) responsible for drafting the Code of Conduct and monitoring the conduct of its members with the purpose of protecting the public interests. However, there are only 76 members in the Association, which accounts for less than 10% of the 900-odd management companies in the territory. As a result, the purpose of imposing self-regulation is not served.

According to the regulations of the Association, a property management company which wishes to become its member should be responsible for managing more than 1 000 residential units or 30 000 sq m of industrial units or 10 000 sq m of commercial units. To put it simply, small property management companies are not welcome. However, some old private buildings with a relatively small number of flats may not be able to afford the fees of large property management companies. They can only hire small-scale property management companies. However, these small-scale property management companies are neither regulated by the Government nor accepted as members by the Association. For the small property owners, protection is really inadequate.

Deputy President, in fact, even security guards have to be licensed. Why are management companies exempted? I hope the Secretary can respond to this

question later. I very much hope that the Government can really establish a licensing regime for property management companies expeditiously so that the small property owners can be given sufficient protection.

Deputy President, we support Mr Alan LEONG's amendment that we should "ensure fair competition in the property management market". Nowadays, many property developers have established management companies on their own in order to manage the buildings developed by themselves. Since they have the objective advantage of being the first management companies, they have indirectly deprived the small property owners' of their right to choose management companies. In fact, this will allow the property management right to be inherited by the developers forever and it will be very difficult to take it back. Meanwhile, some small-to-medium-scale management companies will be squeezed out of the market. Such a practice violates the principle of fair competition. The Government is duty-bound to enact legislation so that all property management companies, regardless of their size, can compete in a level playing field.

Regarding the setting up of a Building Affairs Tribunal, I have put forward the proposal to the Government on different occasions. The Building Affairs Tribunal will follow the example of the Labour Tribunal in that it will provide services to small property owners in an expeditious, inexpensive and simple manner. At present, if small property owners are not satisfied with the operation of the OC, they can only lodge a complaint with the Lands Tribunal or ICAC. However, more than 90% of the cases received by the ICAC do not fall within its ambit or do not involve corruption albeit ambiguous accounts. As a result, these cases cannot be handled by the ICAC. If the case is lodged with the Lands Tribunal, both parties will have to pay very high costs and the costs for civil litigation will even be much higher. So, I hope the Government can establish a Building Affairs Tribunal (*The buzzer sounded*).....

DEPUTY PRESIDENT (in Cantonese): Time is up.

MR WONG KWOK-HING (in Cantonese):to help the small property owners. Thank you, Deputy President.

MR CHEUNG HOK-MING (in Cantonese): Deputy President, to own a cosy nest is the basic aspiration for ideal life of many people. However, in reality, such a simple matter may become a "negative asset" of some individuals due to imperfections in legislation governing property management which may cause a lot of troubles to small property owners.

Take the sudden closure of Harmony Properties Limited (HPL), a property management company, as an example. In this incident, the property owners of 46 buildings have suffered a loss totalling \$7 million, including the management fees and the project fees held in trust by the OCs, together with the salaries in arrears of more than 200 employees. This has become an elegy of the property owners of these 46 buildings. It is worth noting that many of these victimized buildings are single buildings or buildings of small-scale development. I would like to specifically point out that these property owners are ordinary citizens, and most of them have bought their homes with savings accumulated through years of hard work. They thought that they could live and work in peace and happiness. But now they have suffered a loss of tens of thousands or even hundreds of thousands of dollars due to the sudden closure of the management company. This has really made them feel worried and helpless.

In the incident of closure of the HPL, Yuen Long is the "worst hit district" where a total of 15 buildings are involved. Mr LEUNG, member of the OC of one of the buildings, Wing Fu Mansion, indicated that the OC was owed more than \$200,000 by HPL. He complained that, as reflected by the incident, the Government imposed no regulation on property management companies, thus providing no protection to small property owners.

Deputy President, this is precisely the thrust of the motion debate moved by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). On the issue of property management, small property owners are not provided with effective protection. For instance, the sudden closure of property management companies or the compensation case in the accident involving the collapse of canopy of the Albert House leading to one death and seven injuries, the reason is that the management companies had transferred their assets elsewhere before winding up and were unable to pay the enormous compensations. Eventually, the small property owners have to shoulder the huge compensations and become the major victims bearing the heavy debts.

This is a realistic portrayal of the tragedies suffered by the small property owners.

So, the DAB is of the view that the Government should introduce a licensing regime for property management companies as soon as possible in order to strengthen regulation of these companies. Meanwhile, the Government should consider setting up a Building Affairs Tribunal in order to provide a simple and straightforward channel for handling the increasing disputes among individual owners, developers, OCs and property management companies in an expeditious way.

Deputy President, the DAB conducted a telephone survey on this issue and successfully interviewed 1 206 people last month. Around 80% of them considered that an independent tribunal specialized in handling problems and disputes arising from building management was needed in Hong Kong.

In fact, disputes on property management are often cumbersome and complicated. For instance, leakage of water from the ceilings, claiming of management fees in arrears, rental affairs, the legality of OC and proxy, and so on, are frequent but not to resolve. It is indeed necessary to establish an independent tribunal to deal with these problems.

Members may wonder why a Building Affairs Tribunal should be established at this moment when many legislation have included these aspects. I would like to tell Members that the crux of the issue is that problems arising from property management have become more and more serious, thus creating a burden on the Lands Tribunal and Small Claims Tribunal. Moreover, more serious OC disputes, such as environmental hygiene, noises, management of OCs, chaotic accounts, change of management companies, and so on, can only be handled properly after a long waiting time, thus indirectly increasing the financial burden of the small property owners. In order to solve these complicated and cumbersome disputes on a simple and straightforward platform, one of the effective ways is to establish a specialized tribunal.

In the DAB's opinion, in order to avoid aggravating the burden of property owners, the Building Affairs Tribunal should operate in a manner similar to the Small Claims Tribunal. In other words, no legal representation is required for handling property-management-derived disputes involving \$300,000 or less. In fact, the Government conducted a consultation in 2005 on the issue and views

were collected from the industry, such as the Institute of Surveyors, which all agreed to set up a specialized Building Affairs Tribunal. So, the DAB urges the Administration again to consider the setting up of a Building Affairs Tribunal expeditiously in order to further improve and protect the rights of small property owners in respect of property management so that they can enjoy a happy life after purchasing a property.

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

MR LEE WING-TAT (in Cantonese): Deputy President, the Democratic Party has proposed two amendments today, and one of them urges the Government to establish a mechanism for modifying unfair or unreasonable provisions in the deed of mutual covenant (DMC). According to my knowledge, this motion is very controversial and was discussed many years ago. At that time, some Members, including today's Liberal Party, mentioned the spirit of freedom of contract and opined that the DMC was a private contract signed between the developer and property owners. On the basis of spirit of contract, both parties should comply and the Government, which is not a contracting party, should have no right to interfere with the clauses. Otherwise, the contracting parties will be deprived of protection.

We in the Democratic Party would like to point out that while the spirit of freedom of contract should be respected, the Government needs to effect proper intervention in order to protect the interests of the disadvantaged. At present, the Courts, under various ordinances, are allowed to interfere with unreasonable contractual provisions or intervention is allowed through enactment of legislation. For instance, the Government added some overriding provisions, or the so-called mandatory clauses when amending the Building Management Ordinance in the past. It is stipulated in section 34E of the Building Management Ordinance that the provisions in the Seventh Schedule shall be impliedly incorporated into every DMC, regardless of the date the DMC was made. These provisions provide for the termination of the appointment of the manager and bind the owners and the manager of the building.

However, there are inadequacies in these mandatory provisions in respect of protecting the owners' management right because they only apply to the principal DMC rather than the sub-DMC. However, under the circumstances

of giving due respect to the spirit of contract, we can formulate mandatory provisions to protect the management right of owners under the principal DMC. Should the rights of owners under sub-DMC not be given protection?

Regarding amending other provisions in the DMC, including the unfair or unreasonable distribution of share of ownership, apportioning of management fees and property management problems, all these will have an important bearing on the effective management of a building. I believe the Government also understands that some old-style DMCs do have problems for they were mostly drafted by the developers without participation of the property owners. It was almost half a decade ago when there was no guideline on the drafting of DMCs. It was totally unfair to many small property owners or even affected the effective management of buildings or the public hygiene and safety of society as a whole. Should we address the problem squarely only when the problem has developed to an irreversible state?

In the discussion, Members said that the perception of whether or not the provisions of a DMC are fair is subjective. The Government has also stated to the Legislative Council that it is very difficult to ascertain or stipulate whether a DMC is fair. The situation of each building is different, so are the provisions of the DMC. So, we propose to adopt a mechanism in the hope that the authorities will consider it. Our attitude towards this mechanism is prudent. In other words, there must be a high percentage of owners, probably more than 50%, who consider it necessary to amend unreasonable provisions. This is the first hurdle. But after that, there is still another hurdle which is a study by the Home Affairs Bureau because it is responsible for gatekeeping. Even if 60% of the owners consider it infeasible, is it really infeasible? Is it due to impulse? The Home Affairs Bureau has to study whether it is really unreasonable and unfair before submitting the amendments to the Lands Tribunal for approval. If a high percentage of owners have agreed, in addition to a study by the staff of the Home Affairs Bureau rather than a resolution passed by the majority under tyranny, it will be further considered by the Lands Tribunal which will determine whether it is really unfair.

In fact, only very few examples can pass these three tests. Such a stringent procedure could have eliminated factors which are considered to be due to impulse, or some short-term and short-lived factors. I hope the Secretary can really examine whether even such stringent mechanism should be ruled out from

consideration? President, the Government can also consider stipulating in the legislation some factors or principles for determining unreasonable provisions on which the Lands Tribunal or the Building Affairs Tribunal to be established by the Government in future can assess whether intervention in some cases is necessary. We will not intervene in each and every case because we know that it is very troublesome. However, if no intervention is made in extremely unreasonable case, we are worried that we have to deal with unreasonable problems in respect of public hygiene and public safety.

Deputy President, in looking after private property rights and responsibilities, the Government should also look after the reasonable rights of small property owners in building management. For instance, can it mandate that owners who have not paid any management fees — most of them being big landlords and developers — do not enjoy any voting right? This is a really interesting world. Many developers said that universal suffrage is not feasible because many people have not paid tax. However, many big developers and big landlords have not paid management fees, yet they have voting rights and account for the majority. Should such situation be regulated? Can the Government lower the percentage of ownership determining the management right? Alternatively, can the Government make more reasonable amendments in respect of balancing the rights and obligations so that improvement can be made to the DMC or guidelines? I mainly hope that the Secretary can consider effecting intervention in the extremely unreasonable DMCs no matter how stringent his perspective may be. Thank you, Deputy President.

MR CHAN KAM-LAM (in Cantonese): Deputy President, five Members have proposed amendments to Miss CHOY So-Yuk's motion today, showing that we have attached great importance to building management. Of course, the quality of living and quality of building management are closely related. So, the focus of today's motion is on enhancing the quality of building management so that the people's quality of living can be enhanced as well.

A spate of building management problems has occurred in recent years. In fact, these problems have already existed for a long time, only attracting our attention due to wide coverage by the media recently. Particularly for some old private buildings, it can be said that there are a hundred holes in their management. If these problems are not dealt with early, there would be no end to them.

Any improvement to the management of buildings hinges mainly on three things: first, the property management company; second, the OC; and lastly, the government departments. They are indispensable. However, the Government has all along shifted the responsibility of building management to the OCs or property management companies. In recent years, the Government has continuously encouraged, given active approval or even assistance to small property owners in setting up OCs. Of course, the Government will, to a certain extent, provide manpower and resources which are welcomed by us. However, the assistance by the Government is restricted to assisting them in forming an OC. It will retire after the OC has been formed and all management work will be undertaken by the owners. However, as we all know, the owners have joined the OC mainly because of their commitment and sense of responsibility to the building rather than having expertise on building management.

Let us consider one point. As they use their spare time in managing their building after work, they are mostly amateurs. If we do not provide assistance, it is tantamount to requiring a team of untrained soldiers equipped with unloaded guns to go to the battlefield. The Government lets them run their own course after providing them with the armours only. So, many building problems have occurred due to a lack of relevant knowledge by the OC members. We therefore think that the first step that the Government has to take is to enhance the support to the OC and provide various training. It should also provide support in all aspects, in particular, legal, procedural matters and regulation of property management companies. Strong support should be given in all these areas.

In respect of improving the quality of management companies, a licensing regime is a feasible option. Recently, a registration system and classification system have been implemented effectively in the Mainland. This serves as a good example for us. A licensing regime is tantamount to a total quality examination and a process of eliminating the impure and retaining the pure. If the Government is unable to implement such a regime, we of course know that it is due to some people's worry that some small-scale management companies may be eliminated under a licensing regime. But, as Miss CHOY So-yuk has said, the purpose of eliminating the impure is not to get rid of small-scale companies. Rather, it is to get rid of those which provide poor management services and perform unsatisfactorily. The small-scale companies will not be eliminated. On the contrary, their good quality will be certified. So, this will enhance their

competitiveness because this is a positive factor in helping them to compete with the large companies.

With the implementation of a licensing regime, the OCs can choose different property management companies according to various licensing standards. They will not make a wrong choice again due to some uncertain and unclear factors because they will face a lot of problems when re-selecting another management company. Just now, a Member has mentioned a paradox in which security guards are not allowed to take up management work unless they have been licensed. However, a property management company is not required to be licensed. So, this is not a satisfactory arrangement. In our opinion, caretakers should have their qualifications assessed. However, if management companies are exempted, is it necessary to conduct a review? We have also found that since the licensing regime for security guards has been implemented, their problems in quality have been much reduced. This has proved that a licensing regime will certainly help improve the situation.

Deputy President, the most serious management problems do not occur in large housing estates because they are managed by sound and large-scale management companies. Now the most serious problems occur in single and old buildings. Very often, we can see that owners living in some dilapidated buildings are also very old, or even financially worse-off. These buildings, with a small number of households, are poor in quality and managed by some small-scale management companies or even managed by the owners themselves who have not hired any management companies. Under such circumstances, more and more problems concerning building quality have occurred. If the Government does not provide any assistance, more and more problems will arise with these old buildings. Previously, objects collapsed from height occurred frequently, resulting in pedestrians being hurt by fallen concrete and even collapsed canopies. If such problems are to be solved by the OCs solely, it is basically very difficult. So, at any rate, we think the Government should play an active role in building management.

In respect of a licensing regime for the property management companies, I hope the Government can (*the buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Time is up.

MS MARGARET NG (in Cantonese): Deputy President, very often when we look at the night or day scenery of the buildings in Hong Kong from the Peak, we find it very beautiful. But I am frightened and worried. Why? I am worried whether such beauty can be maintained. And the key lies in the management of each building in Hong Kong. In fact, not only the Secretary for Home Affairs should sit in this Chamber today, government officials responsible for land administration should be present.

According to the Government's reply to a Member's question in 2003, there are 42 000 private buildings in the territory. How should repairs and management be conducted in case these private buildings have become dilapidated? As these are private properties, the repairs should rely on the private sector. If repairs by the private sector are done improperly, nothing can be done and a lot of problems will arise. Who should be responsible for repairs carried out in the private sector? From the perspective of the Government, it relies on the owners' corporations (OCs). Now, many problems have occurred to the OCs and we are now dealing with a relevant amendment bill. However, we can see that there are more than 13 000 buildings which are more than 30 years old. In Hong Kong, a building of over 30 years in age is very old. We do not know how many buildings will have potential dangers as the Albert House. We only know that repairs are the responsibility of OCs or other bodies formed by the owners. When they find it difficult or are unable to discharge this duty or basically it is not possible to form an OC, I do not know how the Government can deal with such problems in Hong Kong.

Article 6 of the Basic Law stipulates that the Hong Kong Special Administrative Region Government shall be responsible for such administration. As a result, the Government thinks that it is only responsible for land grants and land sales. But in fact, what will be the situation of buildings in Hong Kong in 30 years? This is also the Government's responsibility. What has the Government planned to do? We are now amending the Building Management Ordinance. No matter how careful the Government has been in drafting the provisions such that they are written in detail and clearly, let us consider one problem. Even Members find these provisions very difficult to understand, not to mention that not all owners are Members or professionals. Even if all the details are written into the Ordinance, can the owners understand or have the patience to read them? Will they become more confused or frightened when they read these provisions? Mr WONG Kwok-hing, a member of the Bills Committee, said that he was frightened when reading those provisions. Deputy

President, you are also a member of the Bills Committee. I cannot demand that every OC or every owner must be well versed in the provisions concerning repairs and management in the Building Management Ordinance. This is impossible.

So, I have to rise to speak on this motion. I think the key lies in the property management companies because the people can require the former to have professional knowledge and understand the requirements in the Ordinance. They also have the right to require the former to be well versed in the procedures. Frankly speaking, procedures of convening meetings or filing a case against those people who have not paid management fees in the Small Claims Tribunal are very simple if one is well versed in them. There is absolutely no difficulty for the qualified property management companies which are familiar with the procedures of convening meetings, which know well when tenders should be invited and the procedures of inviting tenders. Those are just routine work. So, the key lies in the property management companies.

Mr Albert CHAN just said that the property management companies could be as good as angels when they provide excellent services. But they will become the small property owners' nightmare when they perform poorly. He has mentioned a number of major sins. I need not repeat them here. So, Deputy President, in my opinion, to regulate property management companies by means of licensing is to their advantage rather than disadvantage. In fact, regarding from what perspective Hong Kong should be looked at or what problems will be faced by Hong Kong after 30 years or less, this is the Government's solution to the problems.

Some Members also have mentioned the situation under which the licensing regime is implemented. Very often, the Hong Kong Association of Property Management Companies Limited will request licensing requirements be set out by the Government. For instance, the companies should be large in scale, with five years' management experience or experience in managing 1 000 flats. This is really unfair to small-scale property management companies and it is meaningless too. Why should they be required to manage 1 000 flats? There are only 20 flats in the building I live. Why does the Government require that they should manage 1 000 flats? In fact, the main responsibility of the Government is to supervise the property management companies in order to ensure whether these companies possess professional qualification and expertise on property management, whether they clearly understand the conflict of interests and the standard of their professional ethics. So, in my opinion, the

key lies in the individual's qualification. Take security guards as an example. Licenses are issued not to the security companies but to security guards so that the latter can possess professional qualifications. This is not difficult at all. When the Government has achieved this, it can educate the property owners through these qualified and regulated property management companies. We Hong Kong people pay mortgage instalments with our hard-earned money, thinking that we can set our minds at ease after buying a property. But in fact, when you have owned a property, you also bear a responsibility which may be so heavy that it can crush you. So, how should the Government deal with these problems so that the property owners can understand it? For instance, the elderly owners of old buildings are in dire circumstances, how should the Government deal with their problems? The Government should indeed conduct a comprehensive review. After that, there may be fewer people who dare to buy a flat. But Deputy President, we have to take precautions. So, today's debate is very important. Thank you.

MR LI KWOK-YING (in Cantonese): Deputy President, two major requests are raised in today's motion debate. The first is about implementing a licensing regime for property management companies, and the second is about establishing a Building Affairs Tribunal. We have taken the initiative to propose these two requests with a view to upgrading the current level of building management. Some people may be sceptical about the motion, thinking that the passing of the motion will adversely affect small-sized property management companies. I fully appreciate their worries, but they have missed some very important points and put the cart before the horse insofar as the crux of the matter is concerned.

The Building Management Ordinance (BMO) was initially enacted to facilitate management of buildings. We have endeavoured to improve the standard of management in the hope that small property owners living in the building would be benefited. We hope that they can live in a safe and comfortable environment, leading a happy life. In other words, whatever building management improvement policy we implement, the major premise is to uphold the interest of small property owners. Any policy which does not provide the fullest protection to small property owners violates, whether in reason or in sense, the spirit of making the BMO.

Why do we have to protect the interest of small property owners? A recollection of the Albert House incident reveals the answer to the question.

Everyone of us should have heard of the name Albert House. The incident already happened 12 years ago. In 1994, the canopy of a building called Albert House in Aberdeen collapsed. The accident was caused by the demolition of an unauthorized fish tank built on the canopy, resulting in one death and 13 injuries.

Accordingly to the Court's judgement, the six defendants, including the restaurant owner, the OC, the big landlord and the company carrying out the demolition works, were found guilty of negligence and should pay damages of over \$30 million to the victims' families. Since the mishap was caused by the unauthorized fish tank, the restaurant and its licensee naturally should bear most of the liability and should, therefore, be responsible for half of the damages. Responsible for the repairs and maintenance, the OC, the management company and the big landlord had all failed to take good care of the canopy. Each of them was accountable for 15% of the negligence. Finally, the company carrying out the demolition works was held responsible for the remaining 5% of the negligence.

As the accident had resulted in casualties, it was reasonable for the Court to rule that each of the defendants should make damages. The problem lies in the existing legislation which stipulates that each defendant is jointly and severally liable. In other words, if the victims were unable to recover damages from any one of the defendants due to bankruptcy, winding up of business or any other problems, the remaining defendants would be accountable for it.

It is this joint and several liability which has dragged the innocent small property owners into the swirl. The OC of the Albert House has paid up the 15% of the damages accordingly, but the restaurant licensee, the management company and the works company have either gone bankrupt or missing, leaving their compensation responsibilities to the big landlord and the OC. Owing to its inability to pay for the damages and legal fees totalling as much as \$25 million, the OC was ordered by Court to wind up. As a result, the liability of the OC was completely shifted onto the 136 small property owners.

Insofar as the small property owners are concerned, they were basically unable to stop the restaurant from erecting such unauthorized structure. Neither did they have any professional knowledge of building management. That is why they had handed over the management to the OC which hired a professional management company to deal with the building's management. Moreover, the

Court's ruling on damages clearly showed that the OC was only responsible for 15% of the compensation, denoting that they did not have to bear the largest part of the liability. Unlike the restaurant, the management company or the works company which could get rid of all their liabilities by applying for winding up, the OC could not because it was not a limited company. Quite on the contrary, all small property owners would become debtors upon winding up of the OC.

The OC was initially set up to unite small property owners for the proper handling of all matters relevant to the management of the building. But the Albert House incident reflected that the establishment of an OC can at any time become a time bomb for the small property owners. What I said is no alarmist talk. Nor am I trying to deny the contribution of OCs to building management. By quoting the shocking case of Albert House, I just want to remind Members of the importance of a professional and quality management company. The OC and the small property owners may not have the expertise on building management, and that is why they spend money to hire a management company. If the management company were responsible and had stopped or dealt with the problem of unauthorized structure in time, the accident could not have happened.

The small property owners of the Albert House suffered heavy losses. This is a lesson to be learnt. Learning from the past mistake, I propose a review of the rights and liabilities of the small property owners. Suppose that there are four kinds of small property owners in the Albert House. The first kind is owners of negative equity; the second kind is bankrupted owners; the third is owners in the name of a limited company or under mortgage while the fourth is owners whose property are not under any charge. If the OC has wound up, the creditors will of course turn their focus on the fourth kind of owners. If these owners possess other property, they may have to sell them, however reluctantly. Is such kind of joint and several liability reasonable?

On the other hand, if a small property owner has taken out sufficient insurance against his liability while at the same time has not done any wrongdoings, can we consider limiting his liability to just the value of the property in question?

How do we define a professional and quality management company? The fairest way is to set up a proper licensing regime. As for the licensing requirements, my colleagues will discuss the issue in depth. I have to

emphasize that it is the core value and spirit of the legislation to protect the small property owners and to ensure that they live in peace and contentment. On the other hand, I believe that through proper regulation, some bad and substandard management companies (*the buzzer sounded*).....

DEPUTY PRESIDENT (in Cantonese): Time is up.

MR LI KWOK-YING (in Cantonese): Thank you, Deputy President

DR YEUNG SUM (in Cantonese): Deputy President, despite its small size, Hong Kong is crowded with buildings, from single-block buildings to multi-storey commercial/residential buildings, large, commercial/residential housing estates developed in phases and even development clusters comprising detached houses. To establish a comprehensive legal framework or mechanism to effectively supervise different types of property management is indeed not a simple task, not to mention that we are faced with some unreasonable deeds of mutual covenants (DMCs) which merely protect the interests of property developers and large landlords with no regard to the rights of small property owners.

In the Central and Western District, for instance, some DMCs have even stipulated that each flat, regardless of size, accounts for one share of management expenses and has to pay standard management fees, thus causing constant disputes among small property owners. I believe greater disputes will arise if all flats, regardless of size, are required to pay standard fees for building inspection and maintenance under the mandatory building inspection scheme to be implemented in future. This is prevalent among Mass Transit Railway superstructures and properties redeveloped by the Housing Society.

Furthermore, according to some unreasonable provisions, the owner's share of a shopping complex may account for nearly 50% of the total number of shares of the entire building. In times of voting, therefore, the vote cast by the major owner has very often become the deciding vote. This is extremely discouraging to many small property owners. This situation is prevalent among some old single-block or twin buildings. A lot of these buildings can be found in the Central and Western District. Many owners of residential flats actually

hope that the provisions of DMCs can be revised so that the management of shopping complexes and residential flats, including voting and management of all accounts, can be handled separately.

In its submission to this Council, the Hong Kong Institute of Certified Public Accountants has actually pointed out some of the unfair provisions of existing DMCs. According to some DMCs, the first owner and property developer are not required to pay any deposit for management fees as well as other deposits. According to some other DMCs, if the number of shares held by certain owners (such as owners of parking lots) account for a certain percentage of the total number of owner's shares, those owners are not required to pay their share of management fees.

I hope the Government can expeditiously formulate a mechanism to deal with these unfair provisions to, under the principle of fair distribution of powers and responsibilities, help small property owners manage their own properties willingly and effectively to ensure that they can live in a comfortable environment while ameliorating the overall public hygiene and safety problems to be tackled by society as a result of unsatisfactory building management.

Deputy President, the operation of OCs is actually plagued with problems. Basically, many residents cannot completely grasp the related ordinances. As they are no professionals, they can merely rely on management companies as co-ordinators in dealing with laws, building management, and the use of money. From my observation, however, many management companies on Hong Kong Island basically vary in standard. I personally cannot accept why it is impossible to supervise management companies. This is absolutely unacceptable to me.

Many colleagues have earlier referred to the Albert House incident. Incidentally, I would like to thank the Secretary for the immense assistance rendered by him in the incident. Like me, the Secretary should have witnessed from the incident that the quality of its management company is really deplorable. The existence of numerous illegal structures, legal proceedings thus arisen or the management of the entire building have simply demonstrated that the entire building is basically not up to standard. Surprisingly, despite their enormous impact on the people's life, these management companies are not regulated by law. At present, many professions are regulated by law, and their practitioners

are required to study, pass examinations and obtain licences. I find it really intolerable that management companies are not supervised at all.

The Albert House incident merely represents the tip of the iceberg of numerous problematic buildings in Hong Kong. Many OCs throughout Hong Kong are affected by management companies seeking benefits by exploiting the loopholes in law. I have not even mentioned that they make use of many procedures of meetings, loopholes in law, and even collude with companies or professionals they know very well for mutual transfer of benefits. Despite the frequent occurrence of such incidents, residents will find it very troublesome if they are requested to give evidence and have no idea of where to begin tackling all this.

Therefore, I strongly demand the Government or the Secretary to study the matter to expeditiously introduce legislation to regulate the management of all buildings. As the Government has even stated that legislation will be introduced later to make it mandatory for owners to carry out repairs and maintenance, I believe the role played by management companies will become even more important. How can small property owners.....the Government has often stressed the importance of people-oriented governance. The people have spent more than half-a-lifetime's savings to purchase a flat. As they are no professionals, they very often have to rely on management companies. Yet the management companies have chosen to benefit themselves without being regulated by law. This is absolutely unacceptable by today's standard. I hope the Government can listen to the voices of various political parties and groupings today and expeditiously introduce legislation to regulate these management companies through licensing by a licensing board.

Thank you, Deputy President.

PROF PATRICK LAU (in Cantonese): Deputy President, I have been following up the proposals on implementing a licensing regime for property management companies and setting up a Building Affairs Tribunal with the industry.

The industry and I have earlier put forward the proposal of setting up a Building Affairs Tribunal to the Secretary for Justice, WONG Yan-lung. Although the Secretary for Justice has agreed and considered it necessary to do so, he thinks that it is easier and quicker to set up the Building Affairs Tribunal under the existing Land Tribunal.

The Building Affairs Tribunal may adopt appropriate measures, such as stipulating fees for each hearing and impose certain restrictions, to prevent abuse. My constituency supports the idea of streamlining judicial procedures and reducing fees through the Building Affairs Tribunal in the hope that disputes involving buildings can thus be resolved more speedily. Given the large number of Members who support the proposal of setting up the Building Affairs Tribunal, I hope the Secretary for Justice and the Secretary can reconsider this proposal.

On the other hand, the Government has expressed concern that the formulation of a licensing regime for property management will affect the vitality of small property management companies. I agree that all policies must take the principle of fair competition into account.

During my earlier consultation with the property management industry, they expressed great support for enhancing the building management standard through a licensing regime. However, they consider regulation by way of law not necessarily appropriate. Instead, they consider self-regulation more desirable for they have a clear understanding of the actual situation of the industry. Hence, they can act flexibly in meeting the demand of the market and prevent outdated legislation from stifling their vitality.

Actually, similar efforts are being made by the Hong Kong Association of Property Management Companies Limited (the HKAPMC), set up more than a decade ago and providing property management services for 80% of the buildings in Hong Kong, in order to regulate the professional standard of the industry through a membership system. For the sake of enhancing the quality of property management, the HKAPMC has, apart from emphasizing the professional conduct of its members, requested applicants to provide their financial reports for the past two years and subsequent reports every two years to ensure that its members are financially sound and capable of providing property owners with sufficient protection.

Actually, the Government can streamline its administrative work and expedite the implementation of the relevant licensing regime by simply accrediting the professional status of the HKAPMC.

In order to further upgrade the standard of property management services, the licensing regime should be extended to the management level of property

management companies by recognizing them as authorized persons. Similar to other professions, such as the licensing regime for architects and surveyors, and this can be done by setting up a registration committee by a professional association. Through qualification assessment by such means as qualification accreditation, written tests and interviews, licenses can be issued to professionally qualified applicants.

As regards accredited academic qualifications, the property management programme offered by the University of Hong Kong has existed for three decades. I believe there will not be any great difficulty at all to upgrade the programme to accredited academic qualifications. Accredited persons with professional qualifications will then be able to offer more professional property management services.

At the same time, the HKAPMC may ensure, through its committee responsible for monitoring conduct, compliance by its members (whether they are individual or corporate members) with its Code of Conduct. Anyone who has committed an act of misconduct will be subject to disciplinary action, and serious offenders will even be disqualified.

Actually, many Southeast Asian countries, such as Japan and South Korea, have established their property management licensing regimes for a long time. Even some mainland cities have, with reference to Hong Kong's experience in establishing a membership regime, implemented a graded licensing management regime according to the number of housing units. Hong Kong has yet to implement such a regime, despite prolonged delay. If the Government is worried about small and medium companies failing in competition, I think it may consider borrowing the Mainland's classification system. Most importantly, a proper regime should be put in place to assist single-block buildings with few units and no OCs in identifying professional management companies.

(THE PRESIDENT resumed the Chair)

Madam President, in order to effectively upgrade the standard of service, it is most imperative to, besides the establishment of a licensing regime, rationalize the powers and responsibilities of the parties concerned. At present, many building management tasks have become more and more complicated because of the large number of departments involved. As a result, the length of

time taken to resolve many a single problem is unduly prolonged. For instance, water leakage is dealt with by the Food and Environment Hygiene Department, Water Supplies Department and Buildings Department; unauthorized building by the Architectural Services Department, Buildings Department and Fire Services Department; building maintenance by the Home Affairs Department, and finally the licensing of security guards by the Security and Guarding Services Industry Authority.

I therefore propose that an inter-departmental specialized agency be set up for co-ordination of all matters relating to building management. With the provision of more co-ordinated and one-stop services, property management companies would only need to seek help from a single agency which would deploy designated staff to help the help-seekers liaise with the relevant departments to expeditiously resolve the problems encountered, thereby upgrading the standard of management services.

Both the profession and I have reservations about the proposal raised in the amendment, that provisions in DMCs be amended. This is because DMCs are a very important cornerstone for property management. If amended easily, they can lead to difficulties in enforcement. Hence, the standard of property management will fall and owners at large will suffer in the end. Therefore, this issue must be tackled carefully. I so submit. Thank you, Madam President.

MR ALBERT HO (in Cantonese): Madam President, over the past decade or so when I engaged in district work as a Member of this Council, I spent a lot of time assisting the establishment and operation of OCs. I feel that I am obliged to do so because building management really affects the living of the people and determines whether they can work and live in contentment.

Secondly, I have often felt or deeply sensed that the operation of OCs represents the realization of democracy at the grass-roots level. We have continued to make strong appeals for the implementation of universal suffrage in Hong Kong to allow all of us to be masters of our own house by electing our government. I very much hope to see owners in all OCs fulfil their responsibilities as owners and exercise their rights so that they can be masters of their own house and properly manage their OCs. Hence, I will be very pleased when I see that they have succeeded in rationalizing their problems through a

democratic process. However, I will be saddened when I see the eruption of disputes, fierce struggles, and even disputes caused by personal feelings, among owners. Any how, I very much hope to see that a comprehensive building management regime can be established.

Many Honourable colleagues pointed out earlier in the meeting that building management, on the one hand, involves lots of expertise and, on the other, has to take care of the conflict of interests between management companies responsible for daily management and owners as clients of the management services provided. Regarding this intrinsic conflict of interests, a proper framework must be in place to regulate and rationalize the relationship. We therefore feel that it is worthwhile for us to discuss in depth today's motion debate from various aspects.

First, the issue of inequitable DMC or revising unreasonable DMCs. As pointed out by some colleagues earlier, although the existing Building Management Ordinance contains some overriding provisions to annul certain unreasonable provisions or introduce legislative amendments, the scope of application of these provisions is still very limited. We consider that more powers should be conferred on the relevant parties in numerous circumstances to enable the revision of outdated or extremely unreasonable DMCs. I can cite several circumstances from my personal experience: First, the rights of owners were completely disproportionate to their responsibilities when DMCs were formulated. In other words, some owners enjoy enormous voting power because of their possession of a large number of undivided shares; yet they are required to pay very little management fees because the number of their management shares is relatively small. They will become extremely powerful when it comes to voting, which will be based on the number of undivided shares. It is grossly unreasonable that the calculation of management fees is not based on the number of undivided shares. I have no idea why the Government had initially allowed the enforcement of these DMCs. In particular, these DMCs were most prevalent in the '80s. Of course, many of the DMC Guidelines enforced by the existing Legal Advisory and Conveyancing Office under the Lands Department have been updated or modernized. However, many old DMCs still have these problems.

Second, commercial premises, residential premises and car parks are very often separately managed in new DMCs, or have their own management

accounts. In other words, the payment of management fees by commercial users, residential owners and car-park users is based on the "user pays" principle. However, all these parties are not differentiated in old DMCs. The occurrence of disputes is very often caused by the fact that commercial premise users feel that they have failed to enjoy the services they deserve even though they have paid enormous management fees. Many lawsuits have thus continued, and problems remain unresolved. Actually, many owners would like to have their accounts separated; yet they cannot do so because of the restrictions imposed by DMCs. Very often, a DMC can still not be altered, despite having the consent of 95% or 98% of the owners, simply because 2% of the owners have expressed no opinion or the OC concerned has failed to locate them to sign a new agreement. Therefore, we consider it necessary for a new mechanism to be put in place.

I agree with Prof Patrick LAU that changes should not be made indiscreetly. However, the proposal put forward by the Democratic Party imposes several hurdles, and requires an exceptionally large majority, such as 90% of the ownership. Secondly, even if the percentage might be reduced to 80% or 90%, the request will have to be scrutinized by the Home Affairs Bureau and, if considered reasonable, forwarded to the Lands Tribunal for approval by a judge before any changes can be made. I find this approach very prudent indeed.

Second, should the Lands Tribunal be renamed a Building Management Tribunal? Many people felt that the procedure can be streamlined. However, the existing procedure is already a summary one. Hence, many people can initiate a lawsuit without being represented by a lawyer, thus imposing a relatively heavy burden on the Tribunal. Therefore, the crux of the problem does not lie in whether it is a summary procedure. If the procedure is summarized or no litigation fees are required, more lawsuits will probably be initiated. I very much approve of the Administration's recent study on the introduction of conciliation and the possible introduction of a pilot scheme. With the introduction of conciliation, many lawsuits based on misunderstanding of law or disputes arising from personal feelings, or lawsuits initiated because both parties believe their disputes can be resolved only through litigation will then be resolved through conciliation, thus obviating the need for disputes to be brought to the Court. Moreover, problems among owners can thus be resolved in a non-confrontational atmosphere. Therefore, I hope the pilot scheme can be implemented expeditiously.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, since the closure of a limited property management company in 2003, many people in the community have strongly urged for the implementation of a licensing regime for property management companies. With the passage of three years, the Government has simply failed to draw any lesson from the incident. The fact that nothing has been done has greatly disappointed me, for property management has all along been an issue of concern to me.

As a result of the recent closure of yet another property management company, owners of 46 buildings have suffered losses and 200 employees have suddenly lost their jobs. I believe the Government can no longer keep its hands folded. Instead, it must figure out how to protect the rights of small owners.

To start with, I greatly support the establishment of a licensing regime for property management companies. At present, any person can engage in property management by putting up a signboard and pay \$2,600 for business registration. The trade is almost subject to no regulation at all. Is it the case that the Government will not do anything until it sees that affected small owners take to the streets because of closures of property management companies?

In my opinion, the licensing of property management companies should emphasize professionalism, financial transparency, avoidance of conflict of interests, and so on. The threshold on capital and scale should be set as low as possible to prevent the property management market from being monopolized by major consortia. I believe the misgivings of small property management companies about the establishment of a licensing regime can thus be reduced.

At present, many property groups are concurrently operating property management companies for provision of services to housing estates built by their property developers. As a result, the vitality of small property management companies is already quite limited. If each licensed company must meet the licensing requirement of having assets at more than tens of millions of dollars, monopolization by major enterprises will be resulted, and small property owners will definitely suffer in the end.

On the other hand, many property management companies controlled by property developers tend to outsource their cleansing and security services agreements to contractors belonging to the same group. However, in assisting

OCs in selecting service providers, management companies have very often failed to declare their interest regarding the criteria of selection. This is not fair. I suggest the Government require property management companies in its licensing criteria to make declaration of interests to assist OCs in selecting contractors.

Madam President, we can see from many instances arising from the liquidation of the two property management companies that the financial stability of management companies is associated with the interest of small owners. Therefore, I think that small owners have every right to require their property management companies to provide financial information of the companies. I propose that the Government should, in the granting of licences, require property management companies to provide OCs with financial information on a regular basis for enhanced transparency.

The most serious problem with the liquidation of the property management company three years ago was that the funds of the company and those of small property owners were put in the same account. With the liquidation of the company, the funds of the small property owners were gone too. In order to protect the interest of small property owners, property management companies should be required, under the licensing regime, to open an independent account for each client, that is, each OC or owner's committee, so that the funds of small property owners and those of the company can be clearly separated.

The Government must not deny that property management is a profession. Not everyone can be a practitioner of the profession. Licensing is the first regulatory step. While operators of travel agencies, property agencies, securities firms, and so on, are regulated by licensing regimes, why should property management companies be exempted? Is the Government trying to tell us that property management is not a profession? Hence, I propose that the quality of service of property management companies, records of violation, satisfaction of clients, the professional qualifications and experience of the management, and so on, be taken as licensing criteria.

Madam President, I also support the proposal of setting up a specialized tribunal to handle litigations initiated under the Building Management Ordinance. However, I hope that the functions of the tribunal can include, among other things, reviewing clauses in DMCs considered to be unfair to small property owners.

Under the existing Building Management Ordinance, the consent of all property owners must be sought before a DMC can be revised. However, many property developers are also the largest owners of properties. It is simply impossible for small property owners to do anything if they encounter DMC provisions which are unfair to them but favourable to property developers. The proposed tribunal should be given the power to review such matters and order that unfair DMC provisions be revised or repealed.

Madam President, the property management profession involves enormous financial gains. If unregulated, the profession will become a hotbed of social problems. Although the Government has been promoting improvement to building management and encouraging the setting up of OCs, it has been evading the regulation of the property management profession. It is simply trying to escape from the reality. I hope the Secretary can, in responding to the debate later, propose the setting up of a regulatory mechanism for property management in the spirit of addressing the pressing needs of small property owners.

I so submit. Thank you, Madam President.

DR KWOK KA-KI (in Cantonese): Madam President, clothing, food, housing and transportation are the closest concerns to every citizen in Hong Kong. We all go home after work. And we all have a dwelling place of our own. Hence, all of us have to face the consequences of building management, good or bad.

The reason I was once a chairman of an OC was very simple — the developer of the property I purchased had set up a management company which, upon acquisition of the management right, indiscriminately exploited small property owners. Driven beyond the limits of tolerance, some of the owners, including me, eventually set up an OC to deal with the management company entrusted by the property developer.

The process had been very painful because we had to look up the statutes at that time for our rights. We had to overcome a lot of difficulties before we managed to make some gestures, including convening an owners' general meeting. Furthermore, we had to solicit the required number of votes by knocking on every door before the meeting endorsed the replacement of the management company.

However, it turned out to be not that simple. We faced an even more serious problem after replacing the management company. After the takeover, a large sum of money was found to be missing from the relevant accounts which showed an initial profit. Actually, vast sums of money were, for reasons unknown, channelled to the management company upon the resumption of the management right by the owners.

I believe many small property owners in Hong Kong have had the same experience as mine. Over the past couple of years, the Government has been very determined in improving our living environment and building management. Through the Urban Renewal Authority and other agencies, the Government has started putting a lot of efforts in building renovation, and shown great determination in changing the face of building management and setting up OCs. The earlier enactment of Chapter 344 also seeks to rationalize OCs.

However, we have noticed a very unfair phenomenon in the sense that when it comes to the handling of OCs, a lot of liabilities, even certain criminal liabilities, fall on the persons in charge of OCs. At the same time, however, management companies, which may make a profit, or even unreasonable profit, from building management, can stay out of the affair. I do not wish to act like some other colleagues who blame everything on collusion between business and the Government. However, I do not understand why we are not supposed to regulate these management companies if we are really concerned about the rights of small property owners and hope that building management can be improved?

No experience has been drawn so far from the closure of a management company three years ago. In October this year, we saw that more than 40 buildings in a housing estate in Yuen Long were confronted with the same problem — a sudden default in payment by the management company of \$60 million to \$70 million and wages amounting to approximately \$25 million, and yet the persons in charge of the company could get away unpunished and continue with their operation. These unscrupulous businessmen could even replace their old signboard by changing the name of their company from ABC to 123, and continue to profit from exploiting small property owners and their employees. How can the Government turn a blind eye to all of these? Why has the Government failed to introduce legislation to protect the people despite

the constant occurrence of problems with management companies over the years? We understand that this is a difficult task. However, can this be used as an excuse to justify the Government's inaction? What will be the consequences of such inaction? I believe we are trying to do the impossible if we hope for good building management because the management company we have entrusted may, at any time, turn out not to be trustworthy. It is unjustifiable that there is no stringent licensing regime and legislation to assure the quality of management companies and there is no means to protect the rights of small property owners.

This explains why I agree with many of the viewpoints proposed in the motion and amendments. Today is very special in the sense that the amendments share some common points: first, the amendments have all sought to request the Government to amend the Building Management Ordinance to clearly define the powers and responsibilities of property owners, property developers, OCs and management companies; second, they all approve of the implementation of a licensing regime for property management companies to strengthen their regulation; and third, they approve of the establishment of a Building Affairs Tribunal and the relevant mechanism. This is very important.

Small property owners can hardly be protected by solely relying on ordinances relating to OCs and the powers vested by DMCs. For instance, there are 9 900 property owners in South Horizons. The Government has to seek the consent of 50% of the property owners, or more than 4 900 property owners, to make changes. The attendance of more than 400 households is required even before an owners' general meeting can be held.

Second, DMCs are very often used as a means to gain benefit at the expense of small property owners. The property developer of Galaxia, for instance, initially made a lot of undertakings to the Government, including opening up escalators and some public places and maintaining the bus terminal. For all these undertakings, small property owners were required to pay in the end.

We can often see that property developers, management companies and DMCs are seriously flawed. I earnestly hope that the Government can truly draw lessons from its bitter experience and embark on passing new legislation to

implement a licensing regime for the protection of small property owners to enable them to have comfortable homes and prevent them from encountering bitter experiences as those Yuen Long residents did.

I so submit. Thank you, Madam President.

MR RONNY TONG (in Cantonese): President, a group of small property owners have recently approached me for assistance because they had accidentally discovered that their OC had a serious problem in expenditure and so, they intended to inform other owners with a view to questioning the OC to determine if there had been any abuse of public funds. They ended up being sued by the OC for libel instead.

Many housewives shed tears in front of me when they approached me for assistance. One of them even told me she was prepared to divorce her husband because she could not stand the financial stress and the risk that they might lose their homes. From the angle of a professional lawyer, it is most ridiculous that the charge is completely lack of legal basis. It might even be instantly dismissed if it is submitted to the Court. However, these small property owners have to gather funds to hire a lawyer to apply for dismissal of the charge. These stresses are simply unbearable to them.

Subsequently, the OC told them to admit their wrongdoing in order to settle the matter. Furthermore, they would not be asked to pay a single cent if they were willing to do so. Despite my strong advice that the charge should be dismissed by legal means, they had finally succumbed to the mighty and confessed that they had acted wrongly. Owing to this lawsuit, they dare not question the OC again as to whether there is abuse of their money and even corruption. This phenomenon is seriously in breach of social justice. Unfortunately, however, this could be happening every day.

It is even more ridiculous that the OC could sue these small property owners with their money, and yet the property owners were absolutely helpless. This is not an isolated incident. It simply serves to prove the magnitude of the loopholes in our laws. It is simply impossible for the interest of certain major owners to be questioned by small property owners. The length of service and power of the management companies hired by them can simply not be questioned

by small property owners. The Discovery Bay is a perfect example. With their shares adding up to a mere 23%, the small property owners of Discovery Bay can simply not counter the major property owner, who accounts for 77% of the shares. It is simply improbable, and impossible, for the small property owners to set up an OC.

Furthermore, there are many ways for the so-called OCs in power to prevent small property owners from having any say in management issues. In a case recently handled by me, I was told by some small property owners that they had intended to convene a residents' general meeting to question their OC and so, they looked everywhere for small property owners who would give them support and had the authorization letters prepared. At the meeting, however, they were told by the OC that ordinary authorization letters would be rejected and that only the authorization letters printed by the OC in a specific format would be accepted. Consequently, there was nothing they could do to question the OC in connection with its malpractices.

All these examples point to the fact that some OCs possess the power to manage and utilize the resources collected from property owners. For small property owners, this situation can simply not be changed and it is therefore extremely unfair. In my opinion, the Government has every responsibility to provide small property owners with due support to enable them to reasonably exercise their most fundamental right in monitoring property management.

Given their growing severity and frequency, property management disputes often involve complex legal issues or accounting problems, thus leading to frequent litigations or disputes. If all the property management disputes are handled by the Court, the problem will merely get all the more complicated, and the cost will be pushed even higher. As pointed by me earlier, many small property owners simply cannot afford to have these issues settled in Court. Given this, what can we do to resolve this issue? In this respect, we absolutely support colleagues' proposal of setting up a summary Building Affairs Tribunal to handle management problems according to a summary and speedy procedure in order to eradicate the unfairness prevalent in society at present. The Civic Party absolutely supports this proposal.

The Administration has not exerted its utmost to perform its duty in formulating a good property management regime. With reference to a paper (CB(2)1179/04-05(01)) submitted by the Home Affairs Department to the

Legislative Council in 2005, we can see that the Government merely plays the role of a "facilitator". With respect to the request for the enactment of legislation to regulate property management companies, the Administration has merely responded that "even with a regulatory system (in whatever mode), we will not be able to stamp out the possibility of poorly-managed property management companies from closing or conducting illegal activities such as bribery". We are deeply grieved by such excuses because we fully understand it is illogical to think that traffic light signals should be abolished because some people would jump the red light. It is precisely because some people might jump the red light that the traffic light signals must be regulated even more properly.

In this regard, we hope the Government can do its utmost to eradicate these problems of social injustice. Hong Kong is a society that upholds the rule of law. We hope every small property owner can have a chance to exercise their most fundamental right and question the so-called management committees or OCs in power for wasting their resources by illusive means, or even corrupt practices. I hope the Government can address these problems and take immediate actions.

Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, I believe many Hong Kong people share the common goal of having their own properties after they have started working, before or after getting married, because it is the hope of many to build a cosy nest for themselves and their family members. However, President, little do they know that the purchase of their properties is the beginning of a lifetime's nightmare.

Why did I make such a comment? Actually, we can see from the example cited by Dr KWOK Ka-ki earlier that some property owners were forced to set up their own OCs because of the conduct of property management companies. President, Dr KWOK Ka-ki has been lucky because he had the chance and ultimately succeeded in setting up an OC to fight against the property management company. Actually, many buildings cannot set up their own OCs, even if they have a group of enthusiastic owners who are willing to come forward, because they are governed by their DMCs. Properties built along the Mass Transit Railway are a case in point. It is provided clearly in the DMCs of

these properties that no OCs can be established. Only owner's committees can be set up at most. As a result, the quality of their management companies is vital. However, have property management companies been exercising self-discipline satisfactorily? We can see from the frequent occurrence of cases involving property management companies that the answer is negative.

Why would management companies go bankrupt as they are supposed to be responsible solely for managing the management fees collected from small property owners? Not only have management companies gone bankrupt one after another, they have even owed property owners maintenance fees, management fees, wages for management staff, and so on. Management companies are supposed to be responsible for management only, why would those fees have disappeared? It is simply because there is a lack of regulation. Our colleagues have proposed today that a licensing regulatory regime be set up. I think that it is imperative to do so because the Government's long-standing principle that the sector can exercise self-regulation can thus be broken. I hope the Government can really draw lessons from its bitter experience and stop acting in this way. Many small property owners and staff have again and again suffered terribly because of such incidents as bankruptcy of management companies, disappearance of money, and so on.

Therefore, I very much hope the Government can understand that quality assurance cannot be maintained, thus resulting in varied standards, if one can set up a property management company simply by applying to the Hong Kong Police Force for security personnel permits and applying for business registration, without being subject to licensing regulation as presently is the case. In order that we can live and work in contentment, I greatly support the establishment of a licensing regime for proper regulation of property management companies.

Actually, the occurrence of nightmares is not solely attributed to problematic property management companies — as pointed out by Mr Ronny TONG earlier — problematic OCs can be blamed too. Despite the fact that OCs are governed by the Building Management Ordinance (Cap. 344), everyone knows that Cap. 344 is actually a "toothless tiger" because no penalties whatsoever are stipulated in the Ordinance. It is certainly fine if the legislation is complied with; otherwise, nothing can be done. Let me cite owners' general meetings as an example. Even if an OC convenes an owners' general meeting not according to the established procedure, some items can still be endorsed. Property owners can be prosecuted should they fail to pay management fees or maintenance fees as required. Mr Ronny TONG did point out very clearly that

the OC would use its money to initiate prosecution. If the affected owners plead not guilty and decide to take the matter to Court, they have to bear the cost of the lawsuit. This is really miserable. Therefore, OCs must be regulated.

But how should OCs be regulated? Some colleagues have today raised a brilliant idea of setting up a Building Affairs Tribunal. When disputes arise between small property owners and OCs, we would not need to worry about lawyers' fees, for some matters can be defined clearly in the Tribunal. In the past, there have indeed been too many cases of bullying of the weak, in which small property owners have been victimized. Such cases were indeed not infrequent. Therefore, I very much hope that the Government can really consider our proposal today.

The last point I would like to mention is that the establishment of an OC to manage a building or housing estate is not a simple task. It is not at all easy because many small property owners have to go to work in the daytime and can only make use of their spare time to attend to the business of the OC. Furthermore, they do not have legal and administrative experience. Therefore, they desperately hope that the Government can give them assistance. Unfortunately, the Government often says that these are private matters and there is nothing it can do. As mutual aid committees are advocated by the Government, it will certainly help. OCs, however, are let to run their own course, as they are not the brainchild of the Government. The Government is obviously not doing enough by acting in such a half-hearted manner.

For the sake of social harmony, I hope the Government can conduct a fresh review of the situation to examine if the Home Affairs Department can deploy more manpower to assist small property owners in setting up OCs to operate and manage their housing estates so that they can truly have their own cosy nests and make sure that their cosy nests will not become a burden, thus leading to frustration among their families or all parties concerned.

President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I now call upon Miss CHOY So-yuk to speak on the five amendments. You have up to five minutes to speak.

MISS CHOY SO-YUK (in Cantonese): I shall be brief. I would like to thank the five Members for their enthusiastic response by proposing the amendments.

Mr Tommy CHEUNG's amendment seeks to replace "establish a Tribunal" in my original motion with "establish a mechanism". It is extremely doubtful that he really wants to establish a Tribunal, though he has indicated in his speech that a special Tribunal should be put in place. President, there is already such a mechanism, namely the Lands Tribunal, in Hong Kong. I am worried that the Government will use this as an excuse to justify its refusal to establish a new mechanism if it is unwilling to do so. Therefore, the DAB will abstain from voting on this amendment.

Mr Alan LEONG's proposed addition of "amending extremely unreasonable provisions in the deed of mutual covenants" in his amendment is consistent with the long-standing views held by the DAB. Moreover, we have no objection to his proposed addition of "and, through preventing conflict of interests and enhancing financial transparency," in his amendment. We also agree with him that it is necessary to ensure fair competition in the property management market. However, he proposes to delete "individual" from the original motion, which means that villas can be included as well. As the DAB does not take issue with this, it will support the amendment.

Mr Albert CHAN's amendment merely seeks to enact legislation. Actually, legislation must be enacted before licences can be issued. We think that Mr CHAN's amendment is merely trying to state the obvious. Nevertheless, we will still support the amendment.

Mr James TO's amendment seeks to add two extra points to my original motion. One is to establish "a mechanism for modifying unreasonable provisions in the deed of mutual covenants". We agree with Mr TO as he is similarly referring to a mechanism for the protection of owners. As regards the other point concerning the resumption by small property owners of their management right in the situation of the existence of a sub-deed of mutual

covenant, we will also agree because small property owners can already resume their management right if they have a deed of mutual covenant. We cannot see any justification for failure in resumption of management right in the situation of the existence of a sub-deed of mutual covenant. Hence, the DAB will similarly support Mr James TO's amendment.

Mr LEUNG Kwok-hung's amendment is quite troublesome. President, Mr LEUNG proposes to "set up a unit with investigatory powers under the Home Affairs Department (HAD) to undertake investigation into and initiate prosecution against malpractices in the management of private buildings". When it comes to actual implementation, I believe the HAD might not be capable of accomplishing this task even with the recruitment of thousands of extra employees. At the same time, I believe OCs have no wish for the Government to carry out regular inspections. They certainly would not want to see government staff suddenly carrying out investigation to examine if there are management malpractices while they are performing their daily routine. This will result in infinite expansion of the Government's authority. Actually, building management is originally an internal matter for buildings and small property owners. We certainly do not hope to see excessive intervention by the Government. Therefore, the DAB will definitely vote against this amendment.

President, I so submit.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the management of private buildings is the responsibility of owners. The role played by the Government in this regard is that of a facilitator. Through various channels, the Government will assist owners in discharging their responsibility of building management. One important aspect of this work is the provision of a legal framework for compliance by owners. The Building Management Ordinance (Cap. 344), hereinafter referred to as the BMO, aims precisely to provide such a framework to facilitate the establishment of owners' corporations (OCs) by owners of multi-storey buildings and to set down the rules for building management.

So far, roughly 15 000 buildings in Hong Kong have established OCs in accordance with the BMO. Besides, owners of multi-storey buildings may also

choose to establish an owners' committee or employ a property management company to assist in the day-to-day management and repairs and maintenance of their buildings. We understand that with the rising public concern about building management, the public have become ever more exacting of the service standards of property management companies. Some members of the public have therefore recommended the Government to put in place a licensing regime for the purpose of regulating property management companies. The motion proposed by Miss CHOY So-yuk today also deals with this topic, aiming to upgrade building management standards and prevent the occurrence of problems.

However, we note that there are many different opinions about whether a licensing regime should be put in place to regulate property management companies. Those who support the introduction of a licensing regime think that such a regime can better protect owners' interest, as it helps raise the service quality of property management companies and management standards. At the same time, however, we have also heard some opposite views, that the introduction of a licensing regime may lead to huge increases in management fees, thus adding to the burden of owners. It is even argued that some smaller property management companies may fail to survive under a licensing regime. There are roughly several hundred small-scale property management companies and they mainly serve old tenement buildings. Generally, they provide some basic management services to buildings at relatively inexpensive prices. If these small-scale property management companies are out-competed under a licensing regime, the market may become dominated by large property management companies. Owing to the lack of choices, owners of old buildings may be forced to employ large property management companies and pay higher management fees.

For all these reasons, the Government adopts an open attitude towards the introduction or otherwise of a licensing regime to regulate property management companies. In order to gather more relevant information to facilitate the Government's consideration of the whole issue, we have started preparations for a phased study on the regulation of property management companies. In the first phase, we will collect and analyse information about three major areas, namely, the mode of operation and market conditions of Hong Kong's property management industry, the ways in which overseas authorities (including mainland authorities) regulate the property management industry and Hong

Kong's experience of regulating other types of industries. It is expected that the first phase of studies will be completed around April next year. Once the result of the first phase of studies is available, we will consider proceeding to the second phase on the basis of the available findings, so as to assess whether there is a need to set up a licensing regime. In the course of the studies, we will thoroughly consider all the views put forward by Members today.

Mr Tommy CHEUNG's amendment recommends the Government to conduct joint studies with the industry on introducing a licensing regime for property management companies. We do agree to this recommendation. Actually, in any comprehensive consideration of the need or otherwise to set up a licensing regime, the views of the industry are very important. Once the findings of the first phase of studies are available, we will consult the industry and brief the Legislative Council Panel on Home Affairs accordingly.

Some Members have mentioned that another property management company has closed down recently. According to the information we have, the property management company used to manage some 50 buildings. Immediately after its closure, the District Offices concerned already started to approach the OC Chairmen and owners of the affected buildings, with a view to providing them with appropriate assistance. We also held a briefing immediately, during which lawyers, accountants and property management professionals were invited to offer free advice to the affected owners.

We understand that most of the affected buildings have already established OCs and opened separate bank accounts for the handling of their finances. Our front-line liaison personnel have been maintaining contact with the OCs and owners of the affected buildings and providing them with appropriate assistance.

Miss CHOY So-yuk's motion on introducing a licensing regime for property management companies actually aims to protect owners' rights. And, Mr Alan LEONG's amendment even proposes that measures be taken to prevent conflicts of interest and to increase financial transparency. As a matter of fact, under the existing BMO, there are already provisions on the operation of property management companies. These provisions aim to ensure the protection of owners' rights, increase property management companies'

transparency of handling building finances and prevent them from misusing owners' monies.

Mr LEE Wing-tat and Mr Albert HO have also mentioned that Part VI A of and Schedule 7 to the BMO are both about mandatory terms in deeds of mutual covenant (DMCs). All property management companies must abide by such provisions. Under Schedule 7, a property management company must prepare a draft budget and a financial statement at regular intervals, in addition to maintaining proper books or records of account. The BMO also provides that a property management company shall allow owners to have access to the relevant documents. All these provisions aim precisely to increase property management companies' transparency in handling building finances, so that owners can monitor the financial position of their buildings.

With a view to further improving the provisions of the existing BMO, we submitted the Building Management (Amendment) Bill 2005 (the Bill) to the Legislative Council in April last year. This Bill proposes, among other things, to set down a number of new provisions on the operation of property management companies, so as to accord to owners' better protection.

Under the existing BMO, a property management company shall open and maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building concerned. The Bill proposes to further require a property management company to open and maintain one or more segregated trust/client accounts under the OC's name. This proposal can ensure that the property management company will keep the management fees received in a bank account separate from its own monies. Besides, it can also ensure that the management company will not deposit the management fees received from different buildings in one single bank account.

Besides, a property management company must from time to time make procurement or sign contracts on behalf of the OC or building owners. In this connection, we propose to stipulate in the BMO that any procurement of goods or services exceeding a specified value shall be done through tendering and be screened by the owners at a general meeting. These proposals can help increase property management companies' transparency in using management fees, thereby enabling owners to better understand the financial expenditure of their buildings. Through the tendering process and general meetings, owners can monitor the operation of property management companies more effectively.

The Legislative Council has already set up a Bills Committee to scrutinize the Bill and more than 30 meetings have been held to discuss the clauses of the Bill (including the proposed amendments I have mentioned).

The second part of the motion proposes to establish a Building Affairs Tribunal. This topic falls within the portfolio of the Housing, Planning and Lands Bureau. According to the information provided by the Bureau, it actually conducted the first phase of a public consultation exercise on building management and maintenance from late 2003 to early 2004. As indicated by the findings, society as a whole generally subscribes to the view that owners are duty-bound to inspect and repair their buildings for the protection of public safety.

Based on the findings of the first-phase consultation, the Housing, Planning and Lands Bureau formulated the details of a Mandatory Building Inspection Scheme and launched the second-phase consultation in late October 2005. The consultation document concerned seeks to solicit people's views on whether or not it is necessary to establish a separate mechanism for settling building management and maintenance disputes separate from the existing Judiciary or tribunal systems. The second-phase consultation was completed in mid-March this year.

The findings show that some people find it necessary to establish a mechanism not requiring any legal representation. They hope that this new channel can reduce the costs involved and the time spent by the Court handling such disputes. However, there are also other views holding that the establishment of another mechanism may result in overlapping structure and make the systems of Courts and tribunals unnecessarily complicated. And, they also think that the absence of legal representation under the new mechanism may lead to human rights problems.

For these reasons, the Housing, Planning and Lands Bureau is currently conducting an in-depth study on the issue in conjunction with other relevant departments. The Housing, Planning and Lands Bureau and the Judiciary will consider and follow up the public opinions on the Lands Tribunal put forward during the consultation period. The outcome will be announced following the completion of the work concerned.

Mr LEUNG Kwok-hung's amendment to this part of the motion proposes to set up a unit under the Home Affairs Department for initiating prosecutions in

respect of the management of private buildings. We do not agree to Mr LEUNG's amendment. At present, some government departments are already vested with the authority of enforcing the legislation on building management and maintenance. For this reason, it is not necessary to establish a separate unit to handle such matters as proposed by Mr LEUNG.

At present, the Secretary for Home Affairs is the Authority under the BMO, and the Home Affairs Department is the executive arm of the Home Affairs Bureau for the purpose. Building maintenance, on the other hand, is a matter under the ambit of the Buildings Ordinance, and the Director of Buildings is responsible for enforcement. When District Offices notice any contravention of the BMO, they will draw the attention of the persons concerned to the requirements of the ordinance. If we observe any continuation of contravention, we will conduct an investigation and seek the advice of the Department of Justice, so as to determine whether it is necessary to stage a prosecution. Likewise, the Buildings Department will also conduct investigations into any contraventions of the Buildings Ordinance and institute prosecutions if necessary.

However, I wish to emphasize that private buildings are the private properties of owners. Owners themselves should bear the responsibility of managing their private properties. The Government should only play the role of providing appropriate assistance to owners in discharging their responsibility, instead of interfering too much with the private affairs of building management. What is more, experience tells us that most complaints about building management are actually caused by owners' ignorance of the legislation or misunderstanding among owners themselves. The majority of such cases can in fact be settled through communication. As rightly pointed out by Mr Albert HO, our current approach is to settle building management disputes through mediation. If prosecutions are lightly instituted, the relationship among neighbours will be adversely affected and their mutual misunderstanding will also worsen. What is more, this may not necessarily be the most effective means of settling disputes. We must after all bear in mind that our ultimate purpose is not the punishment of any sides. Rather, we should aim to ensure the maximum protection of owners' rights and to create a harmonious living environment.

The Government appreciates people's hope of handling building management and maintenance disputes in a more effective manner. We will seek improvements in this regard. However, in order to achieve this goal, it

will be most important to obtain the co-operation of owners. As a matter of fact, the full involvement of owners is vital to the satisfactory management and maintenance of buildings. If all property owners can play the role of responsible owners and attach importance to building management and maintenance, the number of disputes will naturally decline substantially.

Besides, Mr James TO and Mr Alan LEONG have also put forward respective amendments to the motion, proposing to establish a mechanism for amending unreasonable provisions in DMCs. Mr James TO has even proposed an amendment on sub-DMCs. These two amendments are both about DMCs and were discussed in detail during the meetings of the Bills Committee of Building Management (Amendment) Bill 2005. DMCs are private agreements among building owners, managers and property developers. The Government is not a party to any such covenants. As in the case of any other private contracts, no party to a DMC shall unilaterally modify any provisions of the DMC without the consent of all the other parties. This is a very important spirit and principle underlying our laws.

However, the Government is also aware that the drafting of certain old DMCs may not have given full consideration to the rights of all parties. Therefore, since 1986, the Government has been stipulating in land leases that all DMCs must be approved by the Lands Department and comply with the Guidelines for Deeds of Mutual Covenant issued by the Department. Besides, the Government has also prescribed a number of mandatory terms applicable to DMCs in Part VI A of and Schedule 7 to the BMO. They provide for the responsibilities of property management companies and the power of owners to set up OCs. In these provisions, the management fees applicable to vacant building units as mentioned by Mr Albert CHAN are dealt with and so are the lawsuits between property management companies and OCs. These mandatory terms shall override the provisions of DMCs.

Notwithstanding all this, we are aware of problems with some DMCs. In some cases, such DMCs have even hindered the effective management and maintenance of buildings. Regarding the amendments of Mr James TO and Mr Alan LEONG, I wish to point out that in order to enable owners to manage and maintain their buildings effectively, the Government does not oppose in principle

the enactment of legislation on establishing a mechanism for amending DMCs. As a matter of fact, the Building Management (Amendment) Bill 2005 also contains a number of provisions with enhanced overriding authority over DMC terms. But we must bear in mind that DMCs have set out the powers and responsibilities of owners, developers and managers, so any amendments to them will inevitably affect the powers and responsibilities of the parties concerned. As pointed out by several Members earlier, the concerns of most owners are about their ownership shares and management shares. And, all these concerns are directly or indirectly related to property rights. Consequently, any mechanism that may affect DMCs must comply with the principle of "fair balance". This means the striking of a fair balance between the interests of society as a whole and the protection of owners' rights. When considering whether or not to introduce any relevant mechanism, the Government must take account of the extent to which DMCs can be amended, so as to ensure appropriate protection for affected owners or owners who oppose the amendment of their DMCs. I hope Members can understand that the law can actually do very little in regard to the modification of existing contract rights and property rights.

Mr James TO has made special mention of sub-DMCs. Like master DMCs, sub-DMCs are also private contracts and must thus be approved by the Lands Department in accordance with the Guidelines for Deeds of Mutual Covenant. However, in contrast to a master DMC, a sub-DMC is not applicable to the entire building and it only regulates certain parts of a building, such as the commercial portions or the residential portions. Or, it may even regulate only one unit of a building. The mandatory terms carried in the BMO can only be applied to a master DMC regulating the management of the entire building. They cannot be applied to sub-DMCs regulating only certain portions of a building. However, generally speaking, a developer will specify the appointment of property managers in a master DMC, so in accordance with the Guidelines for Deeds of Mutual Covenant, a mechanism for the termination of appointment must be provided for in the master DMC. Since sub-DMCs must also comply with the Guidelines for Deeds of Mutual Covenant, it will be necessary to provide for a mechanism for the termination of appointment in case the appointment of property managers is specified in a sub-DMC. In such case,

owners regulated by a sub-DMC will also be able to terminate the appointment of a property manager by virtue of the sub-DMC.

Finally, I wish to emphasize that the Government attaches very great importance to building management and maintenance. We will continue to endeavour to perfect the existing legal framework and step up publicity and education, so as to increase owners' understanding of the provisions of the BMO. That way, they will know their powers and responsibilities clearly and can exercise the powers conferred on them by the legislation for the effective management of their buildings. We will continue to discuss the proposed amendments to the Building Management (Amendment) Bill 2005 with the Bills Committee. We also hope that Members can pass the various proposed amendments early, so as to ensure the smooth management of buildings and better protect owners' rights.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr Tommy CHEUNG to move his amendment.

MR TOMMY CHEUNG (in Cantonese): President, I move that Miss CHOY So-yuk's motion be amended.

Mr Tommy CHEUNG moved the following amendment: (Translation)

"To add "better protect the interests of small property owners," after "That, in order to"; to delete "implement" after "to expeditiously" and substitute with "explore with the industry the setting up of"; and to delete "a Building Affairs Tribunal" after "establish" and substitute with "a tribunal mechanism for building affairs"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Tommy CHEUNG to Miss CHOY So-yuk's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Miss CHOY So-yuk rose to claim a division.

PRESIDENT (in Cantonese): Miss CHOY So-yuk 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:

Dr Raymond HO, Dr LUI Ming-wah, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Andrew LEUNG and Prof Patrick LAU voted for the amendment.

Ms Margaret NG, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the amendment.

Mr WONG Yung-kan, Mr WONG Kwok-hing, Mr WONG Ting-kwong, Mr CHIM Pui-chung and Mr KWONG Chi-kin abstained.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG and Mr LEE Wing-tat voted for the amendment.

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG voted against the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 15 were in favour of the amendment, four against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, nine were in favour of the amendment, nine against it and eight abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Implementing a licensing regime for property management companies and establishing a Building Affairs Tribunal" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

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): Have Members cast their votes? Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Ms Margaret NG, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Miss TAM Heung-man voted for the motion.

Dr Joseph LEE abstained.

Geographical Constituencies:

Mr James TIEN, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr CHEUNG Hok-ming and Mr Ronny TONG voted for the motion.

Mr Albert CHENG voted against the motion.

Mr LEUNG Kwok-hung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, 20 were in favour of the motion and one abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 21 were in favour of the motion, one against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

PRESIDENT (in Cantonese): I order that in the event of further divisions being claimed in respect of the motion on "Implementing a licensing regime for property management companies and establishing a Building Affairs Tribunal" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Mr Alan LEONG, you may move your amendment.

MR ALAN LEONG (in Cantonese): President, I move that Miss CHOY So-yuk's motion be amended.

Mr Alan LEONG moved the following amendment: (Translation)

"To delete "in the Building Management Ordinance" after "clearly defining"; to add "in the Building Management Ordinance and by establishing a mechanism for amending extremely unreasonable provisions in the deed of mutual covenants" after "parties concerned"; to add "and, through preventing conflict of interests and enhancing financial transparency," after "licensing regime for property management companies"; to add "and ensure fair competition in the property management market" after "regulation"; and to delete "individual" after "disputes among"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Alan LEONG to Miss CHOY So-yuk's motion, be passed.

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

(Members raised their hands)

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

(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 Albert CHAN will withdraw his amendment if Mr Alan LEONG's amendment is

passed. As Mr Alan LEONG's amendment has been passed, Mr Albert CHAN will therefore not move his amendment.

PRESIDENT (in Cantonese): Mr James TO, as the amendment by Mr Alan LEONG 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 explain 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 JAMES TO (in Cantonese): President, I move that Miss CHOY So-yuk's motion as amended by Mr Alan LEONG, be further amended by my revised amendment.

I think I do not need to talk for three minutes. The revised wording of the motion, as amended by Mr Alan LEONG and further amended by me, are set out in item (9) of page three of the paper issued by the Secretariat to colleagues. I had conceptually proposed two amendments, one concerning amending unreasonable provisions in DMCs. As Mr Alan LEONG has managed to achieve it, I have therefore removed that part from my amendment. The other part is about small property owners being empowered to resume their management right in the situation of the existence of a sub-DMC.

Mr James TO moved the following further amendment to the motion as amended by Mr Alan LEONG: (Translation)

"To add "; and conduct a study on establishing a mechanism to assist small property owners in resuming their management right in the situation of the existence of a sub-deed of mutual covenant so as to safeguard their interests" after "owners' corporations and property management companies"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr James TO's amendment to Miss CHOY So-yuk's motion as amended by Mr Alan LEONG, 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): Mr LEUNG Kwok-hung, as the amendments by Mr Alan LEONG and Mr James TO have been passed, you may move your further amendment.

MR LEUNG KWOK-HUNG (in Cantonese): President, I move that Miss CHOY So-yuk's motion as amended by Mr Alan LEONG and Mr James TO, be further amended by my amendment.

Mr LEUNG Kwok-hung moved the following further amendment to the motion as amended by Mr Alan LEONG and Mr James TO: (Translation)

"To add ", as well as to set up a unit with investigatory powers under the Home Affairs Department to undertake investigation into and initiate prosecution against malpractices in the management of private buildings" after "owners' corporations and property management companies"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr LEUNG Kwok-hung's amendment to Miss CHOY So-yuk's motion as amended by Mr Alan LEONG and Mr James TO, 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 Tommy CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG has claimed a division. The division bell will ring for one minute, after which the division will begin.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki and Mr KWONG Chi-kin voted for the amendment.

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 Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Ms Margaret NG, Dr Fernando CHEUNG, Mr CHIM Pui-chung and Miss TAM Heung-man abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr LEE Wing-tat, Mr LEUNG Kwok-hung and Mr Albert CHENG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Mr Frederick FUNG, Ms Audrey EU, 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, 23 were present, five were in favour of the amendment, 14 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, 13 were in favour of the amendment, nine against it and four 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): Miss CHOY So-yuk, you may now reply and you have two minutes 37 seconds.

MISS CHOY SO-YUK (in Cantonese): President, I am grateful to the 18 Members who have expressed their views on this question. In their speeches, it is also clear to me that no Member has expressed any ambivalence towards or reservation about these two proposals. Members all think that it would only be

strange if these proposals are not put into practice and it is difficult to fathom why they are not implemented.

Now, I wonder how hard we have to cudgel our brains again because no matter how hard I think about it, the response given by the Secretary just now is mystifying to me. The Secretary has explained why licences are not issued. In the past, we heard the Government say that this would put small companies at a disadvantage and now, it says that management fees may have to be increased. This is really puzzling to me because what we are talking about is in fact a very simple issue — just now, some Honourable colleagues have also voiced such views — the licensing regimes regulating many sectors may be more complicated because there is no legislation that covers them. We already have Chapter 334, which is a very sound piece of legislation now being amended, for compliance. Therefore, basically, whether a licence will be issued or not will only depend on whether the standards and integrity of a company comply with the requirements specified in the legislation. It is as simple as that.

As regards licence fees, they will perhaps only amount to several hundred dollars or \$1,000 a year. For a company managing 20 or 200 buildings, the licence fee per building per year will probably amount to only \$10 on average. Therefore, I really cannot see why the Government still insists on having its way.

The Government said that it is necessary to consult the sector and the public, however, Secretary, so far, I have not heard anyone raise any objection. Not to mention inside this Chamber, even the general public, OCs, management companies and the sector have all written letters to express support. I cannot see anyone who will raise objection or express any concern, thus preventing the Government from implementing the proposals.

As regards the tribunal, the Secretary said that owners have the right to manage their buildings properly on their own, however, may I ask in what way is this relevant? Certainly, owners must manage their own buildings properly. However, since owners are allowed to manage their buildings on their own, why is it necessary to introduce legislation to stipulate that OCs have to be established? President, since it is necessary to establish OCs, a good regime has to be established, so that everyone can have a comfortable home and can work in contentment without any worries.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Miss CHOY So-yuk, as amended by Mr Alan LEONG and 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.

(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.

PRESIDENT (in Cantonese): Second motion: Opening up the airwaves.

OPENING UP THE AIRWAVES

MR ALBERT CHAN (in Cantonese): President, I move that the motion as printed on the Agenda be passed. This motion requests the Government to open up the skies..... President, government officials have not yet arrived. Do we have to wait for their arrival? Or, what are we going to do?

PRESIDENT (in Cantonese): Has the public officer arrived yet?

(The Clerk indicated that the public officer had not yet arrived)

PRESIDENT (in Cantonese): The public officer has not yet arrived, but the rules of the Legislative Council do not require that the public officer must be

present when Members start speaking. I therefore hope that you can continue with your speech. You may, however, speak a little more slowly. *(Laughter)* But the time limit will remain the same. *(Laughter)*

(The Secretary for Financial Services and the Treasury arrived at this juncture)

MR ALBERT CHAN (in Cantonese): Thank you, President. I think even if the Secretary were present, I would just be casting pearls before swine. There will not be any difference. Therefore, his presence or otherwise will make no difference at all.

President, the underlying spirit of the motion is to request the Government to open up the airwaves. Narrow-mindedness and a mentality that resists changes will deprive us of the high skies of freedom. The high skies are vast and boundless, and the frog in a well¹ can never realize their magnificence. However, the skies of Hong Kong are not only grey but also under tight control. The skies of Hong Kong are under tight control mainly because our broadcasting policy cannot keep abreast of the times. The broadcasting policy of Hong Kong is even more outdated than the Town Planning Ordinance and many other ordinances. It was enacted before World War II and for this reason, the use of Hong Kong's airwaves must be controlled in such a way that could meet war-time needs. I wish to tell the Government very clearly that the airwaves are the common assets of all people. They must not be used by the Government as a political tool and by individual consortium as a means of furthering their interests. Nor should the airwaves be used as a tool of funnelling benefits from the Government to the consortia, or the mouthpiece of any consortia speaking for the Government.

We can observe that in the development of airwaves, Hong Kong is lagging far behind not only European and American countries but also Southeast Asian places. We may look at some basic statistics. The airwaves of Hong Kong..... Only two radio broadcasting licences, that is, two private licences, have so far been issued. There is of course one public broadcasting organization at the same time. As for the number of radio channels, there are totally 13 channels for Commercial Radio Hong Kong and Radio Television

¹ The allusion is to a frog living at the bottom of a well whose outlook is necessarily circumscribed. The frog in a well has thus come to be regarded as symbolizing a person with a very limited outlook.

Hong Kong. This means an average of one channel for every 534 000 people. In Hawaii, there is one channel for every 75 000 people. And, in Taiwan, there is one channel for every 150 000 people. These are the figures for our neighbouring places. We can also notice that the airwaves are used not just for commercial purposes or as a mass medium. In many places, radio broadcasting is also used for cultural and religious purposes. I suppose many people have the experiencing of living in foreign countries. In Canada, for example, there is a Chinese-language radio station for ethnic Chinese, so that they can appreciate programmes on their own culture or news broadcasts. Therefore, when it comes to opening up the airwaves of Hong Kong, we should not talk only about allowing the people to set up their own radio stations or permitting "Tai Pan" and "Yuk-man" to host radio programmes again. Rather, we must also allow the establishment of radio stations by minority groups and the disadvantaged, such as religious organizations, political groups, commercial organizations and even ethnic minorities. The issuance of licences must be opened up, so that these community groups can establish their own radio stations. That way, their participation in community affairs and sense of belonging can be fostered.

This matter has actually been discussed for many years. As early as the 1990s, it was already discussed several times in this Chamber of the Legislative Council. In 1994, Mr MAN Sai-cheong moved a motion on this issue. His focus was on cable television, and he requested the opening up of public access channels, so that people can produce their own programmes and voice their views through the management of such channels. What is more, also in 1994, the Government even established an inter-departmental working group to tackle this issue. Put simply, there are two major reasons for the Government's reluctance to open up the airwaves over the years. First, it wants to protect the commercial interests of the existing licensees. Second, it wants to control the airwaves and use them as a political tool to restrict the freedom of speech. Such an atmosphere has done serious harm and dealt a heavy blow to any belief that although there is no democracy in Hong Kong, its people can nonetheless enjoy freedom. I therefore very much hope that people can understand that the opening up of the airwaves is not only meant for the benefits of a handful of people. It can also cater for the needs of society as a whole, that is, the religious and cultural needs of various ethnic minorities, community groups and organizations. I hope that Members can support this motion. Thank you, President.

Mr Albert CHAN moved the following motion: (Translation)

"That, while the airwaves should be the common asset of all people, only two sound broadcasting licences have so far been issued by the Government, subjecting the public's speech to unreasonable restrictions and rendering many organizations and individuals unable to disseminate their messages through the airwaves; with the forum for speech diminishing, some members of the public have even set up community radio stations on their own in recent years, but these radio stations have been shut down by the Administration; furthermore, many members of the community have over the years requested the early establishment of public access radio and television channels, so that the public's right to access the airwaves will not be deprived; in view of the above, this Council urges the Government to amend the Broadcasting Ordinance expeditiously to implement the following measures:

- (a) opening up the airwaves to allow the public to operate radio stations on their own, so as to make available diversified broadcasting services;
- (b) opening up public access television channels at an early date; and
- (c) fully implementing digital broadcasting at an early date to increase the number of broadcasting channels."

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

MR ALBERT CHENG (in Cantonese): Today, Mr Albert CHAN has proposed this motion and there are some tabloid gossips that I have taken part in the bidding for a radio licence. All this is really a coincidence. I was pestered by some reporters in the corridor just now for a response. I therefore gave them quite a lecture like a self-important old man. *(Laughter)*

I said, "As media workers, that is, as journalists, besides asking for verification, you must also do some homework. How can I possibly apply for the establishment of a radio station now? And, I do not know how to apply for

a licence either. Unless I follow the example of "Ah Ngau"² and broadcast without a licence. It is impossible for me to apply for any licence now. The Government has not invited any tenders, so how can I submit one?" The Government's broadcasting policy is totally closed.

I am not much of a Legislative Council Member. But I can say very proudly that I was very, very good as a radio programme host. However, why must I still speak here today? It is because I have nowhere else to go. For some time in the past 10 years, in terms of ratings, I was the most popular programme host in Hong Kong. However, following my dismissal by the radio station, not even one single offer came my way. Even though I told others that I was willing to host a programme without any pay, still no radio station gave me any opportunities. Nowadays, even in talk shows, my voice will never be heard. Why? They do not allow me to speak and will never ring me up to ask me to make any comments. They often believe in a kind of "conspiracy theory". President, they always think that I have installed a certain device, that is, a computer, which can alert me as soon as the name "Albert CHENG" is mentioned on the radio. As a matter of fact, I do not have any such device. If any such equipment was available in the market, I would very much like to know where I can buy it.

Actually, in many past cases, it was by mere accident that I heard people mention my name. Frankly speaking, I rarely listen to the radio. In case I accidentally hear any programme host mention my name on the radio, I will say to myself, "What a windfall!" President, why do I say that it is a windfall? The reason is that I can then ring up the programme host immediately. Since he has mentioned my name, it is only natural for me to give a response. But ever since they realized my "trick", they have stopped mentioning my name altogether. And, therefore, I have had quite a peaceful time because I can no longer make use of the airwaves to voice my views.

Insofar as the opening up of the airwaves is concerned, I must say that the policy of Hong Kong as an information technology centre is very backward. This is especially the case when it comes to Radio Television Hong Kong (RTHK). Recently, we have been discussing the issue of public service broadcasting. President, there are five FM channels for Radio Television Hong Kong. But due to resource problems, it is unable to produce enough

² "Ah Ngau" is the nickname of former Legislative Council Member TSANG Kin-shing among friends.

programmes for all the five channels. As a result, in the evening, we can often hear a programme host announce very happily and proudly, "Our programme will now be broadcast simultaneously on channels 1 to 5." What does this mean? Actually, the same programme can be received in any places and on any channels all at the same time. Through the Internet, the same programme can be received all over the world regardless of distance. But then, the programme host still announces, "This programme will now be broadcast simultaneously on channels 1, 2 and 5 and then on all five channels." The truth is that the radio station simply does not have enough resources to produce programmes for all the five channels. People thus think that it is just like "a living man occupying lands for the dead"³. Since the Government has allocated five channels to the radio station, it must provide sufficient resources for it to produce programmes for all the five channels. If it fails to do so, it should open up the unused channels for the general public — I mean, as Mr Albert CHAN mentioned earlier on, it should open up the channels for the minorities, so that they can produce their own programmes. However, RTHK has five channels at its disposal. And, it does not have a licence, so it has been operating without any licence, just like "Ah Ngau". The reason is that RTHK is not required to hold any licence presently. As for licensed operators, there are two commercial radio stations, which basically operate on a commercial basis. As a member of the broadcasting industry, I would put the whole thing very simply: whoever has the support of the audience and advertisers shall be hired. But the current situation is just the opposite. Those supported by the audience and advertisers are out of job, but others without any such support can have a good time talking about all sorts of nonsense before the microphone.

Some Members are not present now. When I discussed with these Members just now, they said that the meeting today could be adjourned very early because no one would want to speak. I asked them whether they would support the motion. They replied that they could not do so because there was one problem with Mr Albert CHAN's motion — there would not be any regulation in case his request for opening up the airwaves was accepted. I wish to tell Members that, first, whether a motion is passed by the Legislative Council, the Government is not required to listen; and, second, it is all a question of principle. The most important principle of Mr Albert CHAN's motion is the opening up of the airwaves.

³ This is a Cantonese colloquialism describing a person who hoards something he does not really need.

If the airwaves are to be opened up, the matter must be put before the Legislative Council for discussions. And, legislation must also be enacted. All this will naturally lead to regulation. How can anyone argue that there will be no regulation? Therefore, when people say that they will not render their support because there will be no regulation, they are just putting up an excuse. But I think we should look at the underlying principle.

Mr Albert CHAN described the experience of foreign countries just now. When I was in Vancouver, I worked in a radio station for quite some time. Vancouver is a city with a population of just 500 000 people. However, they are capable of providing more than two Chinese-language channels. The Chinese population there does not exceed 200 000, but there are already two Chinese-language channels. There are also many mainstream radio stations, that is, FM and AM English channels, so even if we do not count in the French channel of BBC and other radios stations for ethnic minorities such as Japanese and Koreans, we can still see the "blossoming of a hundred flowers". In contrast, there are only two commercial radio stations in Hong Kong for a population of 7 million people. This is actually far from being enough.

Some may of course talk about how very difficult it was to force "Tai Pan" and "Yuk Man" to "quit", though they may probably also argue that Allen LEE was not forced to "quit" but just did so of his own accord. Honourable Members, the problem is that all these people think that it was very difficult to drive away these two men. President, these people all think that if the airwaves were opened up and these two men could once again scream and shout, government officials would be in deep trouble because they would be chided every day. And, political parties would also be criticized by these two men. This is not desirable to these people. Actually, because of the motion today, my opinions are reported in the press. The opening up of the airwaves will result in fair competition. If such a policy change is introduced, anyone or any commercial organizations interested in broadcasting may apply for an operation licence. And, the Government will vet all the applications and select applicants who can meet the requirements. I think this is the most important principle. The freedom of speech and freedom of the press together form one of the important cornerstones of Hong Kong. If we fail to open up the airwaves, people will think that we still stick to the old rut, that is, what Mr Albert CHAN described as the legacy of British political management. In the past, the operation of an unlicensed radio station..... "Ah Ngau" is really lucky. I can remember that 30 years ago, when I was young, I had a friend. He was

frequently visited by the police because he had once committed the offence of operating an unlicensed radio station and been even thrown into prison. Even after his discharge, policemen and officers of the Special Branch still visited him frequently. Therefore, "Ah Ngau" is really very lucky. He has been arrested and prosecuted, but he is still safe and sound. I so submit. Thank you, President.

MR ALBERT HO (in Cantonese): Madam President, the Democratic Party supports Mr Albert CHAN's motion on opening up the airwaves. It is beyond any doubts that with digital broadcasting, spectrum resources can be utilized more effectively and the number of broadcasting channels can also be increased. For instance, one analogue television channel can accommodate four standard resolution digital television channels and one analogue sound channel can also accommodate at least six digital broadcasting channels. Since digital broadcasting can increase channel capacity, it can provide precisely the opportunity of opening up the airwaves, so that people can establish their own radio stations and public access channels can be created. The Government may reserve some of the spectrum resources made available by digital broadcasting, so as to enable the public to establish community radio stations or public access channels. That way, a new sound channel can be created for the public, thus widening this public domain of independent expression and sharing of opinions — the airwaves.

What is more, in terms of both quality and reception, digital broadcasting is markedly better than analogue broadcasting. Problems of poor reception caused by interferences, such as "ghost shadows" and noises, are all eliminated. Digital broadcasting can also serve many functions, including the provision of interactive television, radio, text and picture services. All these new functions can bring business opportunities to people and promote the digital content development of Hong Kong. Besides, following the full introduction of digital broadcasting, the spectrum originally used for analogue broadcasting can be vacated for the provision of other radio services. Given the increasing shortage of radio frequencies, the advantages of digital broadcasting are indeed very obvious. Since digital broadcasting is better than analogue broadcasting in many different ways, the Government is duty-bound to promote digital broadcasting in public interest.

Madam President, as a matter of fact, it is obvious that Hong Kong has been progressing much more slowly than other countries in the adoption of

digital broadcasting. In regard to digital television broadcasting, many other places in the world, such as Britain, the United States, Finland, Japan and Korea, are providing such digital broadcasting services. Some of these countries have even ceased the transmission of analogue broadcast signals this year or will do so sometime next year, with a view to implementing the full adoption of digital broadcasting technologies.

Regarding digital broadcasting, the British Broadcasting Corporation already introduced digital sound broadcasting services as early as 1995. Today, such services already cover 85% of the British population. Many other countries, such as most European countries, Canada and Singapore, have also introduced digital sound broadcasting services. In the case of Singapore and Denmark, the rate of coverage is even 100%. In contrast, the Hong Kong authorities have only asked the two terrestrial television service providers to introduce digital television services in late 2007. And, even in 2008, such services will only cover 75% of the total area of Hong Kong. In other words, Hong Kong is just making a start when other countries have already introduced digital broadcasting on a full scale. The Democratic Party therefore advises the Government to closely follow the test results of the two television stations and make sure that they can attain the target as scheduled, so that the general public can enjoy quality and diversified television broadcasting services as early as possible.

Madam President, the authorities have not yet formulated any plans on the introduction of digital sound broadcasting. Actually, as early as 1998, Radio Television Hong Kong (RTHK) already conducted a test on digital sound broadcasting. And, in 2004, another test was conducted. The findings of both tests all indicate a substantial quality improvement in reception. But the Government has not made any progress in its digital broadcasting policy. It has failed to keep abreast of the times and adopt this new technology, so members of the public are still denied such quality broadcasting services. Since the Government has already recognized the advantages of applying digital technologies to television broadcasting, why should it still mark time on digital sound broadcasting? I hope that the Secretary can answer this question. The Democratic Party hereby urges the Government to formulate a framework for the introduction of digital sound broadcasting as early as possible, so as to pave the way for licence issuance and prevent the broadcasting services in Hong Kong from lagging behind the global trend.

Another point is that in most countries, the adoption of digital broadcasting is invariably spearheaded by public service broadcasting organizations and later extended to other broadcasters and the general public. A public service broadcasting organization will spearhead the adoption of digital broadcasting and promote the use of digital receivers and decoders among the general public. That way, commercial broadcasters will find the incentive to provide digital broadcasting services. The Government should make RTHK spearhead digital broadcasting and provide it with sufficient resources, so that it can introduce digital broadcasting services. Besides, the analogue receivers currently available in the market are unable to receive digital broadcast signals. When introducing digital broadcasting services, the Government should implement appropriate policies to assist people in purchasing new receivers, so as to ensure that all people can receive digital broadcasting services. The Democratic Party hopes that the Government can consider the abovementioned policy. When introducing digital broadcasting services, it should assist low-income earners in purchasing decoders, so as to make sure that all people can receive digital broadcast signals.

With these remarks, I support the motion.

MS EMILY LAU (in Cantonese): President, I rise to speak in support of Mr Albert CHAN's motion. I must thank Mr CHAN or his personal assistant for preparing a set of very detailed background information. It is really superb. Yet, I must remind Mr CHAN that there is one omission in his information because he said that the relevant discussions only started in the 1990s. If Mr CHAN has read this report of ours, he will know the history of the whole issue. Actually, in February 1984, the then Governor-in-Council appointed a Broadcasting Review Board with the responsibility of discussing the establishment of community radio stations. The focus of the studies was on allowing local residents and district boards to establish Frequency Modulation (FM) radio stations in such new towns as Sha Tin, Tuen Mun and Tsuen Wan. However, this proposal was not followed up. It happened in 1984.

Then, in 1993, Wharf Cable was granted a licence for the provision of subscription television service. One of the licensing conditions imposed by the Government was that three channels must be allocated free of charge by Wharf Cable for government use or as public access channels. However, once again,

the Government set up an inter-departmental working group — you know, one of those "almighty" working groups. And, after its studies, the working group decided not to make use of these channels. Why? First, it did not think that a government station should be set up. Why? It was thought that this was a waste of money. And, how about the other reason? It also thought that no one would watch the programmes of such a television station, so it did not want to waste any money on its operation. Second, it did not support the establishment of a public access channel because it thought that an unregulated service might lead to misuse. Mr Albert CHENG has already mentioned all this. Those Members who refuse to speak on this issue in the Chamber will all come in and cast a negative vote when the bell rings later on.

President, I am very puzzled because If Members should care to read this report It was debated only very recently President, what does our panel say in paragraph 4.51 on Page 94 of the report? The panel is all-party in membership, and there are members belonging to different political parties and groupings. On the recent incident involving the Citizens' Radio, that is, the incident involving "Ah Ngau" and his friends, this paragraph comments, "The recent incident involving the Citizens' Radio is an example reflecting the lack of opportunities for community groups to utilize the airwaves to broadcast their programmes. The Panel is aware that one of the Government's concerns is that such channels could be misused if they were not properly regulated. However, so long as the public service remit is well defined for the broadcasters and a proper regulatory system is in place, the Panel sees no reason why broadcasting channels should not be made available to the general public." This is the unanimous view of the panel.

As mentioned by some Members just now, it is not true to say that once a channel is allocated to "Ah Ngau", he will be free to do whatever he likes. There must still be a regulatory framework, but the Government should provide such channels in the very first place. Integrated broadcasting is now very common with RTHK. This means that there are not enough programmes for broadcasting. The panel also proposes to allocate the channels to those people who have no channels to broadcast their programmes, and who have been arrested for still broadcasting their programmes somehow. The panel has made this recommendation. I fail to see what justifications Members can possibly put forward to oppose the recommendation, because it is clearly written down in the

report. Please do not tell me that no one has read this report. We think that there must be regulation, but the Government must provide the channels.

Besides, the report also proposes to conduct studies on resuming the three channels previously allocated to Wharf Cable, so that they can be used by the public. If the Government so desires, it may actually set up a government television station. This is perfectly possible. But now, all is Let me come back to the report. President, the report is really very detailed. It even questions why the authorities should oppose the setting up of public access channels. It is often argued that Hong Kong is small in size, its population is comparatively uniform in composition, and there are already many different forms of broadcasting services to meet people's needs. But I must say that if all these broadcasting services had been able to meet public needs, it would not have been necessary for "Ah Ngau" to do so. He would not have been arrested as a result. The authorities also hold the view that the new media (including the Internet) can provide an effective platform for the delivery of multimedia services to cater for the needs of particular community groups. It therefore sees no strong justifications for opening up the channels.

President, we have actually mentioned many times that apart from "Ah Ngau", many other people, including Albert CHENG, WONG Yuk-man and Emily LAU, are now denied opportunities to voice their views. Society has turned increasingly divisive these days. For various reasons, some mass media simply do not dare to, simply refuse to and simply will not report certain issues. Therefore, the argument put forward many years ago, the argument that there was no problem and no need for any new channels, cannot possibly hold today. WONG Yuk-man often says that he has been driven into the streets, has been forced to voice his views in the streets. He is such a popular person, but he has no channel to voice his opinions. How can the Government still tell us that there are freedom of broadcasting and freedom of speech in Hong Kong? This is simply ironical. However, President, sometimes, people may be driven into rebellion. Sometimes, people may be driven into civil disobedience to challenge the rigid and unreasonable practices of the authorities.

I support Mr Albert CHAN's motion. And, I also hope that the authorities can give some thoughts to it. The Government often talks about developing our city into a metropolis. As mentioned by Mr CHAN, and as pointed out in his document, many other cities have already surpassed us. We often say that we must "overtake Britain and catch up with the United States".

But why are we so backward in this regard? President, do they really think that if some people are allowed to speak more, the end of the world will come? Do they actually think that despite all the support they received from voters in elections, some people in Hong Kong must still be barred from making their voices heard? Do they therefore think that the policies of the authorities must accordingly aim to suppress the voices of these people? If they really think so, the people of Hong Kong will have no alternative but to stage protests and demonstrations. In that case, we may have to see each other in Court. I so submit.

MR JASPER TSANG (in Cantonese): President, on behalf of the DAB, I rise to speak in opposition to Mr Albert CHAN's motion.

I cannot accept the viewpoints expressed by Ms Emily LAU earlier on. To begin with, she claimed that she and some other people seemed to have lost any opportunities of voicing their views. I think I should put it this way. Mr Albert CHENG can speak directly to the public today, but there is of course a big difference if we compare his situation now with the days when he was a radio programme host. However, can it be thus concluded that he does not have any opportunity to speak, or that no one will listen to what he has to say? Frankly speaking, my colleagues in the DAB do often encounter the same situation as described by Ms Emily LAU in her complaint just now. Very often, the press just will not report what we say. In such cases, I will always ask my buddies to consider whether there is really any substance in their opinions, whether their opinions are really worth reporting. If there is really a person as popular as described by Ms Emily LAU, will the media, which all operate on a commercial basis, refuse to report this person's views, which so many people like to hear?

In his motion, Mr Albert CHAN says, "With the forum for speech diminishing, some members of the public have even set up community radio stations on their own in recent years." And, he even uses this as a justification for opening up the airwaves. The expression "with the forum of speech diminishing" is obviously inconsistent with the facts. In what ways has the forum of speech diminished? If he is referring to conventional mass media, can he tell us how the forum of speech has diminished? If he is referring to radio stations Some talked about integrated broadcasting just now and said that there was no shortage of channels At present, many so-called talk shows are broadcast every day almost as routine programmes. They are broadcast every day. Members may wish to conduct a fair and objective analysis. Is all the

airtime in these so-called talk shows occupied by apologists of the Government or the so-called "royalists"? Frankly speaking, it will be unfair for anyone to claim that this is really the case. Members can pick any day for their analyses. The airtime occupied by people who chide and criticize the Government or the royalists, whether they are programme hosts or people phoning-in to voice their views, must be far longer than the airtime I was allocated to speak in Albert CHENG's radio programme in the past.

If there are any changes at all, they must have been caused by the Internet. There are now many more channels through which people can present their personal opinions to the public. I think there is practically no restriction and regulation for all those so-called web radio stations and blogs — the Civic Party has been doing a very good job in this. We are no match for it. I am already a very old man lagging far behind the times, but I have still been encouraged by my young assistants to set up a "Jasper TSANG's Blog". Although the blog is not so beautifully designed, I still put things of all kinds in it, and I also receive responses from time to time. Mr Albert CHENG can likewise make use of this channel. He may record some remarks or images and then upload them onto the Internet. That way, others will be able to listen to his remarks or watch the images by MP3 or iPod, right? I hear that there is now a new dictionary entry — podcasting. It actually means the receipt of sounds and images by iPod. Without all this, how could people in the entire city see and hear how a middle-aged man roared on the upper deck of a double-decked bus? How could this Uncle Bus become the focus of media discussions? Therefore, how can anyone argue that the forum of speech has diminished? This assumption is simply wrong in the very first place.

When Mr Albert CHAN first started to deliver his speech, I actually hoped that he could explain his idea and tell us more about the "opening up of the airwaves". Both Ms Emily LAU and Mr Albert CHENG clarified that this would not mean the complete absence of regulation. According to them, there must be some form of regulation. Mr Albert CHAN did do some sort simple arithmetic. He pointed out that in a certain place, only 70 000 people shared one channel, and that in another place, 150 000 people shared one. He went on to say that in Hong Kong, one channel is shared by several hundred thousand people. But I do not think that such computations are at all appropriate. What does he mean by 70 000 people sharing one channel? I cannot see what he means by this. He claims that he is not allowed to speak on the radio now, but

after the opening up of the airwaves, who will have the opportunity to do so, and what will they say?

What is more, I do not agree with Ms Emily LAU that before the so-called opening up of the airwaves, there will be cases of people being driven by government oppression into rebellion and civil disobedience. Honestly speaking, searches and the shutting down of illegal radio stations occur in Britain and the United States every year. And, they even occur by the hundreds. If we look at the relevant statistics, we will see that in Britain alone, during the period spanning 2004, 2005 and 2006, there were already several hundred cases of shutting down illegal radio stations every year. I of course understand perfectly well that the radio station operated by "Ah Ngau", who is sitting on the gallery above, was all for decent business. But in foreign countries, many illegal radio stations are used for illegal activities. In Britain, for example, a Member of Parliament pointed out in a debate that in some cases, songs were broadcast by illegal radio stations to inform others of the details of narcotic shipment — the vessel involved, the arrival time and location, and so on. Those illegal radio stations will do something like this. For this reason, there must be stringent regulation.

I originally hoped that I could hear more views on how we should regulate the use of the airwaves after their opening up. I hoped that I could hear views on preventing law-breakers from misusing the air waves for illegal purposes. The reason is that such views are in fact very important. I hope that I can hear more of such views later on.

As for the other proposals in the motion, such as the development of digital broadcasting, we in the DAB are in total support. The DAB is very concerned about the progress of the digital broadcasting tests currently being conducted by the two terrestrial television stations. It is also interested in knowing whether digital broadcasting can be introduced according to the timeframe set by the Government. If digital broadcasting can be introduced, there will be several extra channels. That way, they may well be allocated to ethnic minorities as advocated by Mr Albert CHAN. This is something the DAB would very much like to see.

MR LEUNG YIU-CHUNG (in Cantonese): President, on the 23rd of last month, the Office of the Telecommunications Authority formally laid charges against

four comperes of the Citizens' Radio for installing radio equipment without a licence for broadcasting purpose.

President, I am extremely dissatisfied with this incident. Why? It is because if my memory has not failed me, "Ah Ngau" already submitted an application on 8 September last year but up till now, or after more than a year, nothing has been heard about the application. Why? Why has there been no news whatsoever about his application for a licence? Disregarding whether or not a licence will be granted, he should be notified of the result, so that he will be clearly informed. But despite that he made the application a long time ago, not even a bit of news has been heard about it. How can they work in such a way? So, I think "Ah Ngau" was only "forced to go up the Liang mountain".⁴ I do not mean that he has become an outlaw. I am only saying that he simply has no other alternative. He has done what he should do but the authorities have ignored him and taken no action to handle his application. So, I think this is most unfair.

We think that "Ah Ngau" has put across a very good message in applying for a licence willingly. President, what significance does his application carry? It shows that he is prepared to be regulated, and this is precisely a response to the concern expressed by Mr Jasper TSANG about opening up the airwaves. If we accept that a licence is to be issued on application, then, like what Miss CHOY So-yuk said earlier about property management companies, where there is a licensing regime, there will be regulation. This is a most obvious answer. President, this is simply self-evident. I do not understand why Mr Jasper TSANG nevertheless does not understand this point, and he even said that he would like to know what we think. It is just normal that where there is a licensing regime, there is regulation. Has there been any case where licences are issued but they are not subject to regulation? Has there been such a case? So, I think sometimes when we speak, we must speak according to the facts and with substance. We must not make remarks frivolously.

On the other hand, the DAB said that they were unable to have their telephone calls put through to the radio programme hosted by "Tai Pan" no matter how hard they had tried and they felt that they were neither respected nor

⁴ An expression derived from a well-known Chinese classic, *Shui Hu Zhuan* or *Outlaws of the Marsh* (水滸傳), about 108 heroes forming themselves into an outlawed army at Liang mountain dedicated to overthrowing the tyrants.

invited. This may be true, because sometimes "Tai Pan" was really very nasty, and Mr TSANG is not the only person being turned away. Even when we telephoned "Tai Pan" during his programme, he still might not answer our call, for he picked up a telephone line only when he felt like to, and he would refuse to answer a call if he did not feel like to. He was the compere of the programme, and he had his own attitude.

However, there is another problem and that is, he did not tell us another fact. Many members of the media told us in private that the DAB would often decline their invitations, but he did not say anything about this. Not only has the media said so. Even our political parties and organizations have said the same. When we invite him to our public forums, he normally does not show up. He declined the invitations, but he said that other people did not allow him to speak. This is unfair, for he did not tell the truth. So, when we speak, we must give a more complete picture, rather than giving lopsided comments.

In fact, when we say today that we must not be lopsided, it echoes our wish for the opening up of the airwaves, so that monopolization would cease. Indeed, the existing channels are already monopolized by several business organizations and RTHK. This is why there has been no news at all about applications made by the community, and this is a lopsided approach. We hope to popularize the airwaves. If they can be popularized, different opinions can be accommodated in society and people can speak more and express their views more. In fact, all societies in the world have now attached the utmost importance to the local community, hoping that many different voices can be heard or seen in society.

Certainly, Mr Jasper TSANG said earlier that radio stations are not the only channels available, for there are many options on the Internet and so, why do we not make use of the Internet? If on-line radio can be so successful, why do we not tell Commercial Radio and Metro Radio to close down? Why is it that Commercial Radio and Metro Radio have not closed down and they still have a large audience? In fact, everything has its own target and its own pattern and *modus operandi*. Therefore, we cannot say that if this thing exists, that thing must vanish. If something does not have the people's support, it will naturally be ousted and it will naturally cease to exist, and it is useless even if other people step in. If on-line radio stations can be operated very well, it would be meaningless for "Ah Ngau" to apply for a license for his Citizens' Radio, as nobody would be interested in listening to what he said and the

programmes would naturally wither and disappear. So, I think it is not the case that when this thing exists, it will be unnecessary for other things to exist.

In fact, the airwaves belong to the public, and every member of the community should have the right to access them. Certainly, we are not suggesting to abuse them, and I agree that regulation is also necessary. Particularly, the development of digital technology will provide the opportunity, because there are now restrictions on the spectrum and the reception quality is undesirable. Other Members have also mentioned this earlier. So, we very much support the Government vigorously developing digital technology, thereby opening up more channels for free expression by more members of the public.

President, what we are talking about today is precisely the importance of creativity. We must respect some people, so that they can have the opportunity to bring their potentials into play. This has been consistently emphasized by the Government. This applies also to the broadcasting industry, which encompasses creativity. Why do we not provide more opportunities for these people to give play to their talents, so that they can contribute more of their efforts to communicate with the public and hence facilitate the development of freedom of speech in society? Why do we not do this?

I remember that in response to Members on digital channels, Joseph WONG said that the market-led principle must be upheld in digital broadcasting. President, it is market-led again. We all know that if the market is involved, monopolization is often resulted, and it is not that easy for the community to achieve anything. When we adopt a market-led approach, we would stifle many opportunities. I only hope that in today's discussion, Members will understand one point and that is, many countries have already opened up the airwaves and introduced digital channels, so as to enable wider public participation in the broadcasting industry. Why is Hong Kong still lagging behind and retrogressing and why is it still sticking to the old rut, unwilling to accept new developments? I hope that the Secretary can think about this in greater depth and reflect on this matter.

President, I so submit.

MR HOWARD YOUNG (in Cantonese): Madam President, as society becomes more and more open, it is only natural that people will expect greater freedom of

speech. And, the wide dissemination of information, a free press and freedom of speech are the prerequisites of a metropolis in the modern age. Referring to the shutting down of the Citizens' Radio by the authorities, Mr Albert CHAN claims that the forum for speech in Hong Kong has been suppressed. But we have reservations about this claim.

As shown by the findings of a survey conducted by the Hong Kong University Public Opinion Programme in July this year, record-high ratings since the reunification were recorded for two of the 10 "freedom indicators", that is, "press freedom" and "freedom of speech". The ratings were 7.54 points and 7.94 points respectively. The rating for "freedom of speech", in particular, saw the greatest increase, showing an increase of 0.28 point when compared with the rating recorded in another survey half a year before.

Admittedly, there is a shortage of radio and television channels in Hong Kong. But the electronic media aside, the local press and various web platforms such as Internet radio stations, blogs and podcasting also provide considerable room for the expression of opinions. In some cases, the organizations concerned even operate Internet radio stations and blogs to enhance their communication with the public. All this shows that freedom of speech has not been thwarted in any way by the absence of any people's radio stations.

The first point of Mr Albert CHAN's motion urges that the airwaves, a common asset of all people, should be opened up for public use. At first glance, there does not seem to be any controversies over this request. But precisely because the airwaves are a precious and scarce resource, we must bear in mind that if all are free to operate private radio stations, chaos may result and all of us may end up losing the chance of using the airwaves. What is more, owing to limited spectrum resource, the International Telecommunication Union has already laid down a principle requiring governments of different countries to formulate planning on the use of radio frequencies. In the United States, the Congress already authorized the Federal Communications Commission to co-ordinate the allocation and management of radio channels as early as 1934. Similar regulation can be found in other parts of the world. Therefore, while enjoying freedom of expression, we must also understand that it is still essential to allocate radio frequencies in an orderly fashion and award operating rights according to a set of proper procedures, so as to prevent interference with other people.

And, we must not forget that the FM frequencies in Hong Kong are already highly congested. Last year, when the Citizens' Radio launched its trial broadcast, the Metro Broadcast Corporation Limited complained that its channels were taken up by the former, thus affecting its broadcasts. This was inconvenient and unfair to the radio station and also its audience. Some critics wonder whether the threshold for operating a radio station is much too high in terms of capital requirements and other aspects. But we hold that this is just a matter of opinion. The point is for us to consider whether it is fair to existing commercial radio operators if all requirements are lifted.

According to Sharon HOM, representative of the International League for Human Rights, the vital ingredients of freedom of speech include freedom, opinions, expression, information and ideas and the rights and obligations of those who possess the right. However, freedom of speech must sometimes be subjected to certain restrictions necessitated by the need for respecting others' rights and reputation as well as public order. Since radio broadcasting will produce deep and far-reaching impacts, we can certainly understand and must support the imposition of certain requirements on licensees for the purpose of making them comply with rules of broadcasting.

The Liberal Party is of course aware that in foreign countries, some public access channels are established for the general public to produce simple programmes and share them with others. But we maintain that this issue should be considered only after the full introduction of digital broadcasting.

We also support the opening up of public access television channels. The reason is that there are many different ethnic groups and communities in Hong Kong. It is therefore necessary to establish some appropriate platforms for them to express their views, exchange information and even stage performances. We agree that the opening up of public access television channels will not only offer more programme choices to the public but also encourage more people to engage in broadcasting and promote the development of arts and creative industries. I believe that the advent of digital television broadcasting next year will provide a very good opportunity of developing public access television channels.

Madam President, I so submit.

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

MR RONNY TONG (in Cantonese): President, I was not prepared to speak originally, but having listened to what Mr Jasper TSANG said earlier, I think I need to rise to say a few words.

President, Mr TSANG said earlier that friends in the democratic camp might have to ask themselves whether they were discerning enough to be truly qualified to comment on whether or not the freedom of speech has shrunk now. I think this is a matter of opinion. But Members must not forget one fact and that is, Chief Executive Donald TSANG has spoken in "Hong Kong Letter" of Radio Television Hong Kong (RTHK) almost every month recently. He has spoken either in "Hong Kong Letter" or "Letter to Hong Kong" every month. He has written many letters to Hong Kong people. I wonder if he is discerning enough or whether his popularity over the last six months has been so high that he can appear in the programme every month. Is this programme a channel for expression of personal views?

Mr TSANG said earlier that we must appreciate that as radio stations handle these issues or broadcast these programmes on commercial principles, they will certainly adopt a fairer approach in broadcasting, so that the voices of all sides can be heard. But this is not so in reality. Despite their operating on commercial principles, many radio stations have actually exercised self-censorship for some reasons, especially political reasons. Added to this is that one of the three local radio stations — I mean broadcasting radio — is not a commercial radio, namely, RTHK. As the Government has recently taken actions to strangle RTHK, RTHK is under great pressure indeed. Honestly speaking, up till now, we are still very doubtful about whether RTHK can uphold its freedom of speech.

Mr Jasper TSANG said earlier that Members can think about other alternatives. He started a "blog" on the Internet. I do not know what "blog" is called in Chinese. Is it "博客"? Following the trend, I have also created a "blog". I do not know whether Jasper TSANG's blog is very popular, but as far as I have heard, mine is more popular. But how is popularity assessed? It can be a single-digit daily hit rate or one of a few dozens, and the highest may be 100. A hit rate of over 100 is already very good, and it will be reported in the press immediately. But how can this compare with a population of 7 million

people in Hong Kong? Indeed, I think such a hit rate is definitely no match for the population.

Mr Jasper TSANG very much "cares" about us in the Civic Party. He commended the Civil Party for operating an on-line radio successfully. It is true that our on-line radio is quite successful, but on the night with the lowest audience rating, only two people were listening to us. (*Laughter*) However, we broadcast in English on that night and this explains why there was a lower audience rating. There were three of us hosting the programme but only two people were listening. So, Members can see the extent of penetration.

Certainly, there were times when we were successful. For example, on the night when two "famous talk-show comperes" were invited, the audience rating reached a record high of 2 000, breaking the records in Hong Kong. However, when we compare these 2 000 people with the 7 million Hong Kong people, to put it more bluntly, it is indeed like "comparing a mosquito's leg to a cow's limb". In other words, the development of on-line broadcasting is lagging far behind that of the airwaves.

In this connection, many colleagues said that digital broadcasting would be developed very soon and that digital broadcasting would mean an increase in spectrum resources. But the problem is that the Government has time and again insisted that the development of digital broadcasting should be led by the community or the commercial sector. This, I think, is very much questionable, and I have reflected our views to the Government more than once. It is because what we are discussing now is a novel scientific development, and the development of digital broadcasting will result in an increased number of channels. In other words, it will lead to more competition, which is only a matter of course. If the Government shifts its responsibilities to the community and allow business organizations to make decisions on the mode, approach or timing of developing digital broadcasting, this will certainly cause conflicts among the groups with vested interests.

To the Television Broadcasts Limited, for instance, which has such a high market share, if it is required to give up its present share of the market in order to explore into a new market where everyone else can compete with it, this would indeed be a tall challenge to it. On the contrary, the airwaves are a resource of Hong Kong people. The Government has the duty to develop this resource of Hong Kong people for enjoyment by all Hong Kong people.

Certainly, there must be some governing rules or regulations and also procedures to handle these issues. But it does not mean that the Government can completely shift its responsibilities and wash its hands of it by letting the community or business organizations make decisions on how this public resource should be developed. I think this starting point is basically wrong. The Government should recover the right to lead the development of the airwaves, especially the development of digital broadcasting. Decisions should rest with the Government. Those business organizations with conflicting vested interests should not be allowed to decide how or when this very important public resource should be developed.

President, I absolutely support Mr Albert CHAN's motion today, and I hope that the motion will be endorsed. Thank you, President.

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

MR LEUNG KWOK-HUNG (in Cantonese): Jasper TSANG is not in the Chamber. I think he is highly skilled in sophistry. What sophistry did he employ? Firstly, he said that he would like to know how regulation will be imposed. I am a Director of that Citizens' Radio. We have written to the Administration to apply for a licence. We have already provided the Government with all the details of the fiscal budget, as well as what we would do and what programmes we would broadcast. We have submitted an application, and this means that the Government has the power to monitor us and in fact, Mr Jasper TSANG, who is a Member of the Executive Council, may be examining our application. But he told lies brazenly, because he will be setting conditions for our compliance.

I am very disappointed with him. He had been a teacher before. Firstly, teachers must never tell lies. Secondly, he studied mathematics and so, he should know logic. He said that since I have been operating a web radio so successfully, it would be unnecessary to establish a radio station because with web radio service, there are now more media for freedom of expression and freedom of speech of Hong Kong people. I will not argue with him over this point, because it is true that there is this additional medium of web radio. But what am I talking about here? What I am asking for is the opening up of the airwaves for public use, so that all the people will have the opportunity to express their views in the airwaves.

Jasper TSANG was playing the trick of concept substitution, and he should have become a government official — it seems that some people have said that he is interested in becoming a Director of Bureau. It is now time to recruit him into the Government, because even though he had spoken, his speech was hollow. When you tell him about the bursting of a fresh water pipe, he would respond that the sewer has been fixed. He is a person as such. Now that he is not in the Chamber. He must have a guilty conscience and that is why he has left.

He said that web radio is a very good medium for expression. I have not taken exception to this point. But some people do not have a computer. Some elderly men do not have a computer or they do not know how to use it and they know nothing about downloading. If I can broadcast my on-line radio programme in the airwaves, they could then listen to it. Do you not understand my point? What do we see from this trick of concept substitution? We see that his arguments are far-fetched. It is like concealing the facts and revealing only half the picture because they agree to open up the airwaves on the surface, but when it comes to practical actions, everything is just empty talk and they lack the ability to do what they have vowed to do.

Let me tell him an example. During the Hong Kong-British rule — disregarding whether what happened during this period of time was resistance against British suppression or a riot — the Hong Kong communists did not have a radio station. Did they not operate an underground radio? Did they not kill LAM Bun? They had their own radio station at that time and they were telling people to kill this person and kill that person. That was Radio Vila Verde in Macao. The Communist Party's agents came to power in Macao and turned Radio Vila Verde into a tool to serve their purpose. They had done this outside Hong Kong. Did they not feel the miseries of not having a radio station? They have been in the same miserable state before. Why do they nevertheless turn us down today? The Hong Kong-British Government told them to run their own radio station, and they did operate Radio Vila Verde on their own without making use of a local radio station in Hong Kong.

They had been in this miserable state before and they had been the subject of suppression, not being able to do what they wished to do. But today, when they have become the ruling authority, or perhaps because they now have strong backing, they are pointing an accusing finger at their own people and talking gibberish. Did you not represent the disadvantaged? If "Tai Pan" managed to establish a radio station in future, you would regret what you are doing now.

We have statistics to support our arguments. In the Government's replying letter to us, Secretary Frederick MA, who was just standing in for his colleague, said that the spectrum is very valuable and therefore, it cannot be abused. I wish to ask the Government what other companies have applied for a radio licence? Tell me, buddy. We are the only applicant. For whom is the Government saving the spectrum? Will the Government please tell me if there is a fifth applicant? If there is not, why does it not approve our application? Is it deceiving Hong Kong people in so doing?

Second, the Government considers that the three existing radio stations are already adequate for Hong Kong people to express their views, and through these radios, Hong Kong people can have adequate right to know. Is the Government deceiving us? Mr Albert CHAN's paper already told us that there are some 150 radio stations in Taiwan. In Hong Kong, there are ethnic minorities including Fukieneses, Chiuchoweses, Filipinos and Indonesians. These are the statistics supporting the establishment of radio stations for the ethnic minorities. Why would we be deprived of this right?

When a person exercises the rights to which he is entitled, or in this case that I am talking now about my radio exercising the right to which it is entitled, and when these reasonable and inherent rights are denied by a piece of legislation, it means that the legislation is obsolete and amendments are necessary. However, the Government has refused to introduce amendments and worse still, it even rejected the call for digitization when it was requested to take forward digitization.

What did Jasper TSANG say on these issues? Tell me exactly what he had said. He is not in the Chamber now. Reporters should ask him what he had said. So, if we are not allowed to establish a radio station, it is like buying a radio with a completely broken antenna. This is the situation in Hong Kong today. The situation in Hong Kong today is like this radio with a broken antenna which does not work at all. It is like we are broadcasting now but people outside cannot listen to us.

This Government can abuse its powers and suppress the people because people like Jasper TSANG among the "dog⁵ class" are helping the tyrant in his evildoing.....

⁵ The word "dog", when pronounced in Cantonese, rhymes with "九", meaning "ninth".

MR TAM YIU-CHUNG (in Cantonese): President, President.....

PRESIDENT (in Cantonese): Do you have a point of order?

MR TAM YIU-CHUNG (in Cantonese): President, the Member had just made an insulting remark about a Member of this Council. Did you catch it?

MR LEUNG KWOK-HUNG (in Cantonese): You are wrong. The "ninth class" is the "stinking ninth". It was MAO Zedong who said this. He is an intellectual and so, he is in the "ninth class".

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you should.....

MR LEUNG KWOK-HUNG (in Cantonese): Chairman MAO had said this: The "ninth class", the "stinking ninth".

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung.

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

PRESIDENT (in Cantonese): Please sit down, so that I can make a ruling. Why are you so impatient? I now suspend the meeting. I will, according to the usual practice, watch the video tape first.

6.03 pm

Meeting suspended.

6.28 pm

Council then resumed.

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

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

PRESIDENT (in Cantonese): We have a quorum now.

PRESIDENT (in Cantonese): Members, I have watched the video tape repeatedly in my office. I think that Mr LEUNG Kwok-hung's remark about Mr Jasper TSANG, judging from the context of his speech, was offensive and insulting. Mr LEUNG Kwok-hung had tried to explain earlier in this Chamber that his remark did not carry that meaning, and he also explained in my office that he did not mean that. In that case, I hope that Mr LEUNG Kwok-hung will withdraw that remark and tell us what exactly is his point.

So, I now call upon Mr LEUNG Kwok-hung to speak.

MR LEUNG KWOK-HUNG (in Cantonese): President, I have decided to withdraw it, because what I said was the "ninth class", or the "stinking ninth" used by MAO Zedong to describe the intellectuals. I have repeatedly thought about what Jasper TSANG has done, and I was wrong. In fact, he is unlike an intellectual and so, I will withdraw the words "ninth class". Such misunderstanding is really unnecessary. I am really sorry about it. As I was thinking and thinking, I came to realize that this is so unnecessary. His deeds and his words are unbecoming of an intellectual and so, I withdraw the words, "ninth class". I truly mean to withdraw them. Thank you, President. Thank you for reminding me that I have used the wrong words. I should not have used those words to address him.

PRESIDENT (in Cantonese): Right. Your speaking time is up.

MR LEUNG KWOK-HUNG (in Cantonese): I mean I should not call him in that way. Time is up?

PRESIDENT (in Cantonese): Yes, your speaking time is up.

MR LEUNG KWOK-HUNG (in Cantonese): Members now understand that he is not the "ninth class"; he is not an intellectual.....

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you may sit down.

MS AUDREY EU (in Cantonese): President, in fact, in February this year, the Legislative Council already passed an original motion moved by me and the amendment proposed by Mr SIN Chung-kai about the policy on public service broadcasting. We called on the Government to, among other things, open up public access channels at an early date for public participation, provide diversified information, cater for the needs of the minority and the socially disadvantaged groups, and allocate adequate resources to expedite the development of digital broadcasting, so as to allow the development of public service broadcasting to sustain in an era of digital convergence. Indeed, what was endorsed in the Legislative Council at that time is consistent with the measures proposed in this motion of Mr Albert CHAN today, which also calls for the opening up of the airwaves, opening up of public access television channels and full implementation of digital broadcasting at an early date to increase the number of broadcasting channels.

I have listened to what Mr Jasper TSANG said earlier on this motion, and with regard to the major demands made in the motion, he is basically supportive of them, but he said in his speech that he would vote against the motion because he disliked the preamble of the motion which mentioned diminishing forum for speech. He opined that this was not true and that the forum for speech had not diminished. President, I believe that very often, this is only a question of different viewpoints and angles. When we hear remarks not to our liking, we think that they are very unpleasant to the ears; but when we hear remarks that we like to hear, we think that we should hear them more often. When you do not hear remarks that you dislike, you may think that this is a good thing; but if you have to shut up because what you wish to say is not pleasing to another person's ear, you will feel that the forum for speech has diminished. In fact, it is really not the case that we, Members of the Legislative Council, will decide for all citizens what they like to hear, and in most cases, it should not be the

Government to decide what they like to hear. If we truly support opening up the airwaves and the forum for speech, then our demand should be the same. We should not debate whether there is less or more of what we like to hear, because we can see unanimous support in the Legislative Council for the most important part of the motion.

With regard to the speech made by Mr Jasper TSANG, we thank him for his commendations for the on-line radio of the Civic Party. But as we all know, there are, in fact, great difficulties in listening to on-line radio. As Mr Jasper TSANG also said earlier, owing to the age factor, he may not be able to keep abreast of the popular trend about knowledge of surfing on the Net. This is also the case for many Hong Kong people. Even if they wish to listen to it, they may not have sufficient means and skills to do so, and they even have to buy a computer before they can listen to on-line radio programmes. Even if many people may have the skills, it still may not be very convenient for them to listen to on-line radio programmes for various reasons. This is different from broadcasting in the airwaves, especially to many taxi-drivers who work laboriously every day in Hong Kong. The airwaves are always most user-friendly and most readily accessible. For this reason, as we can see, all Members of the Legislative Council are, in fact, supportive of opening up the airwaves.

Moreover, this concerns not only the freedom of speech, President, but also harmony in society because opening up the airwaves will allow free expression by the minority and production of programmes which can enhance communication among all sectors of the community, while enabling the majority to have more in-depth understanding of the minority and hence eliminating misunderstanding in all aspects. For instance, we know that on Sunday morning there is a radio programme hosted by an Indonesian gentleman. People who make telephone calls to this programme are mostly Indonesian domestic helpers, and they often have to speak in Cantonese, although they are not very fluent in the dialect, because this is a programme in the Chinese channel. In fact, whether it is the "elderly at Victoria Park", students, new arrivals or ethnic minorities, many would hope not only to air their views. They also hope that when they air their views, their views can be heard by many people.

In fact, there are at least 110 countries or territories in the world where the airwaves have been opened up to allow the public to establish a diversified range

of community radios, which in turn allows the audience, sponsors and market force to decide what is considered adequate. An international coalition known as the World Association of Community Radio Broadcasters consisting of about 3 000 community radio stations worldwide has been formed to promote exchanges. European and American countries aside, community radios can also be found in at least 12 territories or countries in Asia, such as Singapore, Taiwan, Thailand, Japan, South Korea and Cambodia. Hong Kong has claimed to be a metropolitan. Why have we performed so badly in respect of opening up the airwaves? The spectrum for FM broadcasting in Hong Kong has been fully taken up by a total of seven channels operated by Commercial Radio, Radio Television Hong Kong and Metro Radio, while only two channels are left for AM broadcasting but this is downright inadequate to meet the needs of the general public.

As technology advances rapidly, it is, in fact, outdated to impose control and allocate spectrum according to the Telecommunications Ordinance. Digital broadcasting will be launched for television programmes next year in Hong Kong, but digital radio broadcasting still will not be introduced in the foreseeable future. Whenever we brought up this issue, former Secretary John TSANG would tell us that digital radios were very expensive. But, as we all know, computers were also very expensive when they were first introduced, but following continued application and development, the price would naturally come down. I do not hope that these technical problems will be used by the Government as an excuse to further put off or shelve the discussion on the opening up of the airwaves. We hope that the Government can consider making some slight adjustments to the radio programmes before fully implementing digital broadcasting because, as Mr Albert CHENG said earlier, as long as merged broadcasting is reduced, it is basically possible to spare some spectrum for public use.

President, we hope that Members can consider the motion from its main theme and support the objective of opening up the airwaves. Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, first of all, I wish to clarify that Mr Jasper TSANG left the Chamber earlier and was therefore unable to stay until the end of the meeting not because he has a guilty conscience, but because of some good tidings in his family, for he just became a grandfather today. His

daughter gave birth to a baby boy and so, he had to rush to the hospital to see his daughter. This is why he could not stay for the meeting.

I have listened to Ms Audrey EU's speech earlier and I found that she understood very clearly the essence of Jasper TSANG's speech. That she could understand it so clearly is proof that she had listened to it attentively, and she also summarized the views of the DAB on this issue. In fact, with regard to points (a), (b) and (c) of the original motion, we consider them agreeable and do not see any problem with them. But with regard to the wording of the preamble, we consider it unacceptable and so, Mr Jasper TSANG expressed our opinions. Particularly, on the point about the diminishing forum for speech, we beg to differ. However, I do feel that speech in this Council is sometimes restricted. Why do I say so? It is because I feel that sometimes when we speak, if some Members hear something that is not pleasing to their ears, they will resort to vicious attacks, brazen intimidation, criticisms, humiliation or slandering, and when they are taken to task for what they have done, they will make denial cunningly or resort to sophistry. So, this is why I feel that the forum for speech has diminished in this Council.

Besides, I would like to say that Hong Kong is a society where the rule of law prevails. All persons are equal before the law, and all persons must abide by the law. This spirit of the rule of law is very important to Hong Kong, and we all cherish it very much. Under the law, any activity without an approved application will be prohibited in accordance with the law, and the processing time of an application must not be used as an excuse for doing whatever one likes. This must not be allowed, or else society would be plunged into chaos. For example, some friends in the New Territories have applied for building their small houses for as long as three to five years and their applications still have not been approved. Could they build their small houses to the neglect of everything else? This is impossible. Another example is that some friends in the catering sector also have to wait for a very long time. Their applications still may not be approved even though they have waited for most part of a year. Could they open their restaurants and do business to the neglect of everything else? This is also impossible. The case is the same for friends who provide elderly care services, as their applications still may not be approved after waiting for months and so, they may not be able to provide the service. It is not true that this is specifically targeted at a particular person or organization. In fact, this is the way how Hong Kong works in accordance with the procedures set out in law. Certainly, we have always criticized the Government and proposed to the

Government that the application procedures should be expedited and transparency be enhanced and that it must not purposely make things difficult for the applicants. We often put forward these views for the consideration of the Government, and I think only this is a reasonable and sensible way to address the problem.

With these remarks, I do not support the preamble of the original motion.

DR YEUNG SUM (in Cantonese): Now we know that there are happy tidings in Mr Jasper TSANG's family. Here, I wish to congratulate him.

Madam President, I think the airwaves are basically the space of the community and should belong to the general public, rather than purely monopolized by some business organizations or radio stations. Hong Kong is gradually moving towards a mature civil society, and I think the Secretary will not deny this. Voices of the people are coming from all quarters of the community. Voices of the minority or voices that express the wish of not being subject to manipulation of advertisements or mainstream ideology should also be given room for expression.

However, Madam President, the Government's broadcasting policy has long been outdated and conservative, and members of the public seem to have accepted that the monopolization of the airwaves by consortiums or radio stations is a very healthy phenomenon. But this is basically not in keeping with the times. When Hong Kong society is gradually on its way to become a mature civil society, and when people's voices are surging and fast-changing, the Government actually has the duty to provide them with some broadcasting channels, so that in a mainstream or commercialized media organization, they can maintain their own characteristics and at the same time enjoy the right to speak. As the audience reach is highly diversified in society and there are also many different communities, I think all people should be allowed to express their views in a mature civil society. The Government often said that this could not be done due to problems with the channels or other technicalities. But as digital broadcasting becomes more and more popular, I reckon that there should not be any problem in terms of channels.

Madam President, a broadcasting licence is very expensive now, and the licensing authority has also set certain requirements on the operation, financial

conditions and technical standards of radio stations. Therefore, it is basically very difficult for the general public to establish a channel. For instance, a Citizen's Radio in Hong Kong has made applications to the Government for a licence, but the Government consistently refused its application for various reasons and because of the outdated policies, and the radio was even shut down by the Government.

The Government should now reconsider the broadcasting policy, in order to cope with the development of a civil society while opening up the airwaves and even providing public access channels on its own initiative or through RTHK, so that voices of the minority or various communities can flourish through these channels, thus enabling them to express different opinions. This is also an inevitable process or necessary means for Hong Kong to develop into a civil society.

I hope that while the Secretary will read out Secretary Joseph WONG's speech on his behalf, he can also hear our voices today and reconsider this issue, with a view to opening up the airwaves as soon as possible. The Democratic Party supports the motion proposed by Mr Albert CHAN.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in the absence of the Secretary for Commerce, Industry and Technology) (in Cantonese): Madam President, I thank Members for their speeches in which they have expressed views on such matters as the opening up of the airwaves for the public to operate radio stations on their own, the establishment of public or community radio and television channels, and the implementation of digital broadcasting. As the Secretary for Commerce, Industry and Technology is not

in Hong Kong today, I will respond to this motion on his behalf. In other words, I am a substitute

Normally, a substitute needs only read out the speech from the script, but I wish to respond to some of the remarks that I have heard today. Before I explain the Government's position on the establishment of public access channels or community channels, I must state solemnly that the Government absolutely — absolutely — disagrees with the point made in Mr Albert CHAN's motion that public speech is subject to unreasonable restrictions and that the forum for speech has been diminishing. The freedom of speech is the cornerstone of stability and prosperity in Hong Kong, and it is protected by the Basic Law in express terms. Let me make it clear to Members that the Government will not — will not — do anything to limit the freedom of speech.

During the debate earlier, I was very much shocked at hearing Ms Emily LAU — Ms Emily LAU is not in the Chamber now — say that some members of the media "do not dare to report" some issues. This is quoted from what she said. She said that they did not "dare to report" some issues. I believe friends in the media certainly feel very uncomfortable at hearing this, because I think it would never be the case that members of the media in Hong Kong would not "dare to report" something. So, if an opinion poll is conducted tomorrow on Ms Emily LAU's remark about the media in Hong Kong not daring to report certain issues, I believe the majority public will take exception to this statement.

Besides, I noticed that Mr Ronny TONG had mentioned "Hong Kong Letter" or "Letter to Hong Kong" of Radio Television Hong Kong (RTHK). In fact, I also noticed that Ms Emily LAU has often used "Hong Kong Letter" to express what is on her mind. Apart from Ms Emily LAU, many Members have also used this channel to criticize the Government. So, I do not think that the Government has taken up the platform of RTHK for its own defence. I remember that last week, an academic even used this channel to criticize the Goods and Services Tax (GST) and state its demerits. Frankly speaking, to date, it seems that government officials, including myself, have seldom discussed GST in "Hong Kong Letter". I had only attended "City Forum" with Mr Vincent FANG. Speaking of "City Forum" — I wonder if Mr Vincent FANG will recall it — although RTHK is funded by the Government, the programme was very balanced in that appropriate arrangements were made both for the supporters and critics, and it absolutely did not only arrange for the

Government's supporters to attend. In this regard, I believe members of the public have discerning eyes, and they can see this point. So, how can the Government be alleged to have strangled the freedom of speech? I really do not understand it. I have lived in three world-class cities in the world. Apart from Hong Kong, I had lived in Toronto, New York and London before. I would say that the media in Hong Kong absolutely enjoys the freedoms of news coverage and speech. The contents of radio programmes are very good, and the phone-in programmes allow members of the public to air their views freely. Coupled with the fact that new forms of media have become increasingly popular, the room for the freedom of speech has actually become widened. How could it be narrowed? So, this is really incomprehensible.

Moreover, the rule of law is another cornerstone of stability and prosperity in Hong Kong, and this is agreed by all Hong Kong people. When exercising their freedoms, members of the public must at the same time respect and abide by the laws of Hong Kong, and this, I believe, nobody will disagree. These laws include the Telecommunications Ordinance. Under the Telecommunications Ordinance, it is an offence to use radio equipment without a licence for broadcasting purposes and the maximum penalty is a fine of \$100,000 and imprisonment of five years.

On this point, I must refute the points made by Mr LEUNG Yiu-chung earlier. Mr LEUNG Yiu-chung said that we had forced "Ah Ngau" "to go up the Liang mountain". "To go up the Liang mountain" is also quoted from Mr LEUNG. I very much appreciate what Mr TAM Yiu-chung has said. He said that one cannot proceed to build small houses because the waiting time is too long. Let me cite another example. There is a waiting time for driving test. But can we drive without a licence during the waiting period because we think that the waiting time is too long and put the blame on the Government? Is this reasonable? Let us examine our own conscience and argue with reason. Only this can be considered true freedom of speech.

Regarding this requirement of compliance with the law or working in accordance with the law, I believe the barristers in the Chamber will certainly throw weight behind it. It is a must to work in accordance with the law. The provision of radio broadcasting service in the airwaves involves the effective use of spectrum, which is a precious public resource. The existing broadcasting licensing system is to ensure that broadcasters allocated with spectrum will use the spectrum for broadcasting purposes in an orderly and responsible manner.

Illegal broadcasting will create interferences to legitimate spectrum users and hence affect both public and private telecommunications and broadcasting services. For this reason, we must enforce the Telecommunications Ordinance and eradicate illegal broadcasting to ensure that legitimate communications and broadcasting services are not subject to interferences. In order not to affect the legal procedures, the Government will not comment on the case of alleged illegal broadcasting involving Mr Albert CHAN. But we can tell Members that concerning an application made to the Government for a licence to operate a radio station, the Government is processing it in accordance with the Telecommunications Ordinance and the established procedures. The processing work has reached the final stage, and the applicant has been notified of the latest situation. The authorities are awaiting the response from the applicant.

In fact, in various places of the world, radio broadcasting is subjected to relevant legislation, rather than operated by the people as they wish. Apart from the need to prevent interference with radio communications, we must also ensure that the broadcast contents are in line with the basic principles of broadcasting, including respect for public tastes and decency, impartiality and fairness, not inciting hatred and not upsetting law and order and public security, protection of youth, giving the party being criticized an opportunity to respond, and so on. Licensed broadcasters shall assume editorial responsibilities. Take Britain as an example. Under the Wireless Telegraphy Act and the Communications Act, the maximum penalty of illegal broadcasting is an uncapped fine and imprisonment of two years, and offenders are prohibited from working in legitimate broadcasting stations for a period of five years. The British Office of Communications launched 1 021 enforcement actions in 2004, including 30 surprise raids, to eradicate illegal broadcasting. In the United States, illegal broadcasting is also a criminal offence. In 2003, the Federal Communications Commission launched 18 enforcement actions against illegal broadcasting.

I would like to talk briefly about the current situation of Hong Kong. Earlier on many Members mentioned the practices adopted in foreign countries in establishing community and public access channels. They considered that Hong Kong should follow suit.

As far as we understand it, the objective of foreign countries in establishing community and public access channels is to make up for the

inadequacy of commercial broadcasting service. The channels target at specific districts or communities, with a view to providing a platform for the residents to express their opinions. The United States, Canada and Australia are among countries where community and public access channels are established. These countries are vast in size with sparsely populated remote areas where the broadcasting and communications network is comparatively backward. Besides, in these countries, there is a large number of people of different ethnic origins, historical background and culture scattering in different parts of the country. Given the exorbitant cost of the development of broadcasting networks and production of programmes, commercial broadcasters in these countries normally provide general broadcasting service only for the whole nation or a major region (such as a state or province). Therefore, it is necessary for these countries to provide community or public access channels for people living in the remote areas or a specific community (such as a particular ethnic race) inhabiting a particular district, in order to take care of their needs to obtain information and entertainment and enable them to air their views through these specific channels.

Unlike foreign countries, Hong Kong is a very small but densely populated city. The case of remote areas requiring special broadcasting service does not exist in the territory. Meanwhile, 96% of the population of Hong Kong are Chinese people with similar cultural background. The ethnic structure is comparatively unitary with strong social homogeneity.

This means that, unlike those foreign countries, Hong Kong does not have a strong need to provide one or more specific community or public access channels for people living in the remote areas or people of different ethnic origins.

There is a large variety of broadcasting channels and programmes in Hong Kong. RTHK and the two commercial radios have a small number of programmes in languages of ethnic minorities (such as Indonesian and Tagalog). Besides, the two television stations broadcasting free TV programmes and the three broadcasters of pay TV programmes provide a total of four free TV channels and over 230 pay TV channels for the public. The television programmes are wide-ranging, covering entertainment, information, culture, science and education. They are broadcast in different languages (such as English, Indian, Putonghua, French and Japanese), and provide service to an audience of different ethnic origins and with different interests. Besides, the local citizens can choose to watch over 200 free satellite television channels from all over the world through the satellite television reception system. Generally

speaking, the local broadcasting market is flourishing, offering many choices to the public.

Local broadcasters have also produced a large number of current affairs programmes to discuss public affairs, providing a broadcasting platform for people from different strata, sectors and districts to express their views. Phone-in programmes which encourage participation from the audience are broadcast during the golden hours from morning to night seven days a week. The views expressed by the public in these phone-in programmes are often reported by the media. In fact, apart from broadcasting service, there are 48 newspapers and 701 periodicals in Hong Kong. All these are channels for the expression of different opinions.

Traditional broadcasting service aside, rapid technological advancement has facilitated the emergence of a diversity of new media. Thanks to the popularization of broadband Internet service and the development of wireless communications technology, the forms and number of media today have substantially increased compared to the past. Information can now be disseminated at a faster speed, to places farther away and more extensively, thus broadening the room for information dissemination and freedom of speech in society at large.

The emergence and popularization of new forms of media is a common phenomenon all over the world. As many Members mentioned earlier, new forms of media such as "blog", "podcasting", web radio, on-line video streaming service and video sharing websites are now very popular on the Internet. Everyone can become writers, DJs, film directors or journalists.

The services provided by these new forms of media are numerous. Any person using some very simple equipment can express their opinions, and provide or receive information and entertainment through new forms of media.

In Hong Kong, the penetration rate of personal computers in households is as high as 70%, the broadband penetration rate is 66% and that of mobile telephone is 125%. Hong Kong ranks among the top in these aspects, and this has facilitated the application of new media more extensively in Hong Kong. Many Members, such as Mr SIN Chung-kai who is not in the Chamber today, and also Mr Ronny TONG, have created their blogs on the Internet illustrated by pictures. Members also mentioned the web radio operated by the Civic Party.

I have not listened to it before, but in case there are again only two people listening to them in future, they can ring me up and let me know and I will show my support. In Hong Kong, television or radio broadcasting on the Internet does not require a licence but is subject to the regulation of the Control of Obscene and Indecent Articles Ordinance.

Compared with traditional media, new media are in a better position to provide a platform for information and exchanges for specific communities or social groups because the new forms of media will not be affected by the lack of spectrum, for they have a huge capacity to provide a great variety of services, and they are not subject to the time and geographical constraints. Users may choose their most preferred time and place in using the services, enabling the services to be more personalized with stronger interaction. Moreover, investment on new media in terms of production and transmission is inexpensive but cost-effective. Hong Kong is a small, densely-populated city with a relatively simple community structure. This will facilitate effective dissemination of information through various traditional and new media, enabling free expression of personal opinions by members of the public.

It is the position of the Government that Hong Kong does not have a pressing need to establish community or public access channel service. However, the Committee on Review of Public Service Broadcasting appointed by the Chief Executive is currently carrying out work in this respect. We understand that the Committee is looking into matters relating to community broadcasting and public access channels and may put forward opinions in its report to be published later. As the Secretary for Commerce, Industry and Technology said last week in a motion debate in the Legislative Council, the Government will fully take into consideration the Committee's report and recommendations.

A number of Members urged the Government to implement digital broadcasting at an early date when they spoke earlier on. The Government has already drawn up the policy on digital broadcasting to take forward digitization, with a view to maintaining Hong Kong's position as a regional broadcasting hub and facilitating the more effective use of spectrum. An objective of the policy on digital broadcasting is to increase the channels for broadcasting through the introduction of the latest broadcasting technology, thereby providing more choices of programmes to the public.

In respect of digital terrestrial television (DTT), the Government announced as early as in 2004 the policy framework for DTT implementation. Under this framework, the two domestic free TV programme service licensees, namely, the Asia Television Limited and Television Broadcasts Limited are required to start simulcasting their existing television services in both analogue and digital format in 2007. The two licensees have embarked on the planning, design and construction of the network, and are in the course of testing the transmission and reception of digital signals. Two working groups led by the Office of the Telecommunications Authority are working with the two TV broadcasters to tackle all technical issues relating to the construction of the network, DTT transmission and reception, and also the receiving equipment. We have also embarked on the publicity work, including launching a website on digital television to enable the public to gain a fuller understanding of DTT.

In the Legislative Council Brief issued by us on 29 March this year, Members were informed of the implementation of DTT. The Legislative Council Panel on Information Technology was further briefed on the progress of implementation of DTT on 18 July. We will further report the development in this regard to the Legislative Council in due course.

As for digital audio broadcasting, we have commissioned consultants to conduct a study. Having considered the technical and economic factors and results of public consultation, we have adopted the market-led approach. In fact, following the development of digital radio broadcasting technology, mobile television broadcasting, rather than digital audio broadcasting, has become the focus of attention in places all over the world. Apart from the few countries where mobile TV broadcasting is implemented, the governments and regulatory authorities of various countries are actively considering ways to introduce mobile TV broadcasting. We have noticed this development trend and we plan to consult the public several months later on the policy framework for introducing mobile TV broadcasting. We have talked about our plan in the consultation paper on Digital 21 Strategy published recently.

Insofar as digital audio broadcasting is concerned, in line with our market-led practice, the Government will consider the application for using L Band for testing digital audio broadcasting, and we will also consider the application for using Band III for similar testing having regard to the use of spectrum. On 9 January, the Government explained clearly to the Legislative Council Panel on Information Technology the policy on digital audio

broadcasting and the relevant considerations. We will continue to progress with the times and technology, in order to encourage the introduction of innovative technology and services in the industry, thereby enriching the lives of the people.

Madam President, the Government reiterates that there is no question of the freedom of speech diminishing in Hong Kong. Traditional and new media can provide diversified programmes and enable the expression of multifarious views by all sectors of the community. As Secretary Joseph WONG said in the motion debate on public service broadcasting last week, according to an opinion poll conducted by the University of Hong Kong, the public rating of the freedom of speech has continued to rise between the middle of last year and the middle of this year — this was also mentioned by Mr Howard YOUNG earlier — showing that the allegation made by Mr Albert CHAN in his motion is inconsistent with the fact. I hope that Members will vote against Mr CHAN's motion.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Albert CHAN, you may now reply and you have nine minutes 34 seconds.

MR ALBERT CHAN (in Cantonese): Mr Jasper TSANG has just rushed back to the Chamber. First of all, I congratulate him for becoming a grandfather and I hope that his grandson will not grow up under a closed sky. The freedom of thinking and freedom of information are extremely important to the next generation. I hope that the birth of his grandson can change his position and also the way that he is going to vote, but I think this is quite unlikely to happen. To Members of the Executive Council, their compliance with the principle of collective responsibility can defy human conscience.

President, a frog in the well can never appreciate the splendour and beauty of a boundless sky, like many Members opposing the opening up of the airwaves saying in their speeches that the forum for speech of the media (especially that of radio) has not diminished in Hong Kong over the past few years. The Secretary also said the same in his speech, completely turning a blind eye to the truth. They are like Napoleon in *Animal Farm*, who thought that lies were the truth and war was peace. To the Government, it is true that the freedom of speech has

not diminished because government officials now enjoy greater freedom and the pro-government forces have found more room. So, to people with vested interest, the freedom of speech has not diminished, and this is absolutely true.

But when we look at radio stations, especially phone-in programmes, the two cannons which used to bombard the Government have now become "shoe-shining" tools. One often helps the Government promote its policies and defends the Government and is even awarded the bauhinia medal. This is so ironic. A member of the media, a host of a phone-in programme is outrageously awarded a bauhinia medal. This is absolutely ridiculous. This is a complete bankruptcy of his professionalism. The other radio now hurls a few criticisms at the Government on the one hand, but gives it a lot of help on the other. It takes the Government to tasks just nominally and then defends the Government. It is more ridiculous that the two comperes who could make the most money — many friends said earlier that this is commercial operation — had nevertheless been dismissed. So, if this is not considered as political persecution, then this is absolutely incomprehensible from a pure commercial or economic angle.

Some Members said earlier that "Tai Pan" did not let them or the DAB speak. But "Tai Pan" did not let me speak either. "Tai Pan" had hung up on me before in his programme and he even said in his programme that he would sever his friendship with me. I had been treated in the same way. So, the freedom of speech cannot be distorted only by looking at what happened to a couple of people. But since the two programmes were taken off from the airwaves, criticisms of the Government have significantly diminished and the extent of criticisms has also shrunk considerably. This is an absolute fact.

Broadcasting in Hong Kong is actually the same as the economy and the wealth pattern in Hong Kong, that is, there is a lot of room at the top but limited space at the bottom, and standards are lax at the top but stringent at the bottom. The speech of the rich people and the information accessible to them are unlimited, for they can afford Cable TV and many broadband programmes, and they have the means to apply for 3G, and so on, and they can, therefore, obtain unlimited information. Certainly, I mean the reception, not dissemination, of information. The rich people can even put up a full page of advertisement in newspaper to express their opinions. So, the rich people can enjoy a higher degree of freedom. But when we review the past decades, despite the development of information, the forum for speech for the grassroots has not been

widened, and it is still the case that "there is plenty of room at the top but limited space at the bottom". This is like wealth in Hong Kong. When the wealth-related Gini Coefficient rises higher and higher, it means that the rich people become richer and richer while the poor become poorer than poorer. The case of broadcasting is also the same. The rich people can obtain more and more information from broadcasting, while that obtainable by the lower class is increasingly less. But this is not the case in overseas countries, because the people need only switch on the radio and they can listen to almost countless programmes. However, the grassroots in Hong Kong, especially people who do not have the means to afford pay TV programmes, do not have this right.

Secretary Frederick MA said earlier that community radios are found in foreign countries because of their vast expanses of remote areas. This is nonsense. Many community radios can be found in the urban areas, and there are similar radio stations in New York, London, Vancouver and Toronto. We may seldom tune into the programmes for the minority, such as homosexual groups, religious groups and ethnic minorities. In Taiwan, there is a radio station which exclusively talks about Buddhist scriptures and Buddhism, and it is not the case that these radio stations are about politics only. So, if the DAB will apply for establishing a community radio station about selected works of MAO Zedong or selected works of DENG Xiaoping, I would throw full weight behind it, for this would be a choice for the minority, so that the people can study these works and then understand what MAO Zedong meant by the "stinking ninth" and stop misunderstanding "Long Hair".

It is precisely because population in Hong Kong is concentrated that it is necessary to establish more community radio stations, so that through these community radio stations, the public will be provided with more choices, whether in relation to religion or ethnic minorities. As the ethnic minorities do not have the opportunity to establish a radio station, they can only beg some companies for a bit of the airtime for broadcasting but then, the Government and Secretary Frederick MA would say that the Filipinos have this programme and the Indonesians have that programme as if they had made enormous achievements, but these are just arrangements made to provide them with some very short time slots after their begging. So, the more I look at Secretary Frederick MA, the more I think that he resembles Napoleon; (*laughter*) there is really some resemblance between them in their form and appearance. Secretary Frederick MA, this could be a blessing. (*Laughter*)

President, under the present circumstances, of course, I would expect Members of the ruling coalition to vote against this motion, because they are obliged to perform a political task. Being Members of the Executive Council and the ruling coalition, they, like the Government, are now in the group with vested interest which controls the forum for broadcasting. If they allow "Tai Pan" and Raymond WONG to go on the air, they would certainly face greater political pressure and so, it is absolutely understandable that they would oppose opening up the airwaves. Therefore, that they will vote against the motion is precisely a decision made according to their political stance and political interest.

However, the Government said that the freedom of speech has not diminished. This is absolutely an "ostrich" attitude which continues to be a disgrace to Hong Kong. Broadcasting in Hong Kong has gradually degenerated into a tool for the ruling, and this is really saddening. Despite all the developments made to date in the 21st century, broadcasting in Hong Kong has made no progress and worse still, it is even backtracking. This is also a result brought by government policies. The Government lacks confidence. If it has sufficient confidence, it would have opened up the radio stations to allow public criticisms, and this would also provide the opportunity for the Government to give play to its skills of persuasion, in order to convince the public. But it has not done so. Now, the Government has controlled all the media, depriving the public of the opportunity to speak. The demise of the media is most saddening of all since Hong Kong entered the 21st century.

In fact, Secretary Frederick MA has already pointed out the crux of the entire issue earlier on. He said that insofar as licensing is concerned, the Government must be responsible and work in an orderly manner. This is precisely the crux of the whole issue. The Government considers that the media must be responsible, but to whom? Not to the public, but to the ruling, the Government. So is the case for speech. It should be dealt with in an orderly manner, and this means that when the Government has to announce its policy objectives, arrangements will be made for Directors of Bureau to promote the policies. This is absolutely the crux of the whole issue.

With regard to the application for a licence, the difficulty in applying for a licence now is that the entire application procedure is indicative of black box operation and executive dominance and hegemony. The criteria are completely unclear; the decision-making power entirely rests with the Government and

members of the public simply do not have the opportunity to speak. So, if our sky continues to be grim and closed, it would continue to be a disgrace to Hong Kong, and broadcasting will only become a platform for collusion between business and the Government and for transfer of benefits, and the rights of the people would continue to be strangled. I hope that Members can work for a wide, free sky for our next generation and for Jasper TSANG's grandson and support this motion. I wish Jasper TSANG (*the buzzer sounded*).....

PRESIDENT (in Cantonese): Time is up for your reply.

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

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Albert CHAN 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 Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for one minute after which the division will begin.....it should be three minutes, sorry, (*laughter*) I am a bit confused.

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 CHEUNG Man-kwong, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying 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, 16 were present, four were in favour of the motion and 12 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 13 were in favour of the motion and seven 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.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11:00 am on Wednesday, 15 November 2006.

Adjourned accordingly at twenty minutes past Seven o'clock.

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Financial Services and the Treasury to Mr CHIM Pui-chung's supplementary question to Question 1

As regards the definition of connected parties, the relevant information is set out below.

The Listing Rules of the Stock Exchange of Hong Kong Limited (SEHK)

The Listing Rules of the SEHK apply to matters related to those securities and issuers with securities listed on the SEHK. The Listing Rules contain comprehensive provisions to define "associate" and "connected persons". Relevant extracts from the SEHK Listing Rules are at "Annex A".

In relation to an individual, an "associate" include a person's spouse and any child under the age of 18. The definition is applicable to a wide range of cases including the determination of public float and notifiable transactions, and so on. In the context of "connected transaction", the requirements are more stringent as an "associate" would also include any person cohabiting as a spouse and any child regardless of age.

The Codes on Takeovers and Mergers and Share Repurchases

The Codes on Takeovers and Mergers and Share Repurchases (Takeovers Codes) are issued and administered by the Securities and Futures Commission (SFC). The primary purpose of the Takeovers Codes is to afford fair treatment for shareholders who are affected by takeovers, mergers and share repurchases. The Takeovers Codes provide a detailed definition of "acting in concert" by setting out the classes of persons who would be presumed to be acting in concert with others in the same class, unless the contrary is established. Relevant extracts from the Takeovers Code are at "Annex B".

Members may wish to note that Class (8) of the presumption for acting in concert provides that an individual is presumed to be acting in concert with his close relatives. Note 8 to the definition of acting in concert clarifies that close relatives include a person's spouse, *de facto* spouse, children, parents and siblings.

WRITTEN ANSWER — *Continued*

Annex A

Extracts from SEHK Listing Rules

CHAPTER 1

Chapter 1**GENERAL****INTERPRETATION**

For the avoidance of doubt, the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited apply only to matters related to those securities and issuers with securities listed on the stock market operated by the Exchange other than the Growth Enterprise Market (“GEM”). This stock market is defined as the “Main Board” in the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (the “GEM Listing Rules”). All matters related to GEM and securities and issuers with securities listed on GEM are governed by the GEM Listing Rules.

1.01 Throughout this book, the following terms, save where the context otherwise requires, have the following meanings:

- | | |
|-----------------------------------|--|
| “accounts” | has the same meaning as “financial statements” and vice-versa |
| “approved share registrar” | a share registrar who is a member of an association of persons approved under section 12 of the Securities and Futures (Stock Market Listing) Rules |
| “Articles” | the Articles of Association of the Exchange |
| “asset-backed securities” | debt securities backed by financial assets which, at the time of the relevant issues, are evidenced by agreements and intended to produce funds to be applied towards interest payments due on the securities and repayment of principal on maturity, except those debt securities which are directly secured, in whole or in part, on real property or other tangible assets |
| “associate” | (a) in relation to an individual means:— <ul style="list-style-type: none"> (i) his spouse; (ii) any child or step-child, natural or adopted, under the age of 18 years of such individual or of his spouse (together with (a)(i) above, the “family interests”); (iii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his family interests is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a |

WRITTEN ANSWER — *Continued*

discretionary object and any company (“trustee-controlled company”) in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the “trustee interests”);

- (iv) a holding company of a trustee-controlled company or a subsidiary of any such holding company; and
 - (v) any company in the equity capital of which he, his family interests, any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and
- (b) in relation to a company means:—
- (i) any other company which is its subsidiary or holding company or is a fellow subsidiary of any such holding company or one in the equity capital of which it and/or such other company or companies taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the

WRITTEN ANSWER — *Continued*

voting power at general meetings, or to control the composition of a majority of the board of directors;

- (ii) the trustees, acting in their capacity as such trustees, of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to the company's knowledge) a discretionary object and any company ("trustee-controlled company") in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the "trustee interests");
- (iii) a holding company of a trustee-controlled company or a subsidiary of any such holding company; and
- (iv) any other company in the equity capital of which the company, such other companies referred to in (b)(i) above, any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company

Notes (1) This definition is modified in the context of connected transactions by virtue of rules 14A.11 and 14A.12.

WRITTEN ANSWER — *Continued*

(2) *In the case of a PRC issuer, its promoters, directors, supervisors, chief executive and substantial shareholders, the definition is amended to have the same meaning as in rule 19A.04.*

“authorised representative”	a person appointed as an authorised representative by a listed issuer under rule 3.05
“bank”	a bank licensed under the Banking Ordinance or a bank incorporated or otherwise established outside Hong Kong which is, in the opinion of the Commissioner of Banking, adequately supervised by an appropriate recognised banking supervisory authority in the place where it is incorporated or otherwise established
“bearer securities”	securities transferable to bearer
“Board”	the Directors of the Exchange elected or appointed in accordance with the Articles and, where the context so permits, any committee or sub-committee thereof
“business day”	any day on which the Exchange is open for the business of dealing in securities
“CCASS”	means the Central Clearing and Settlement System established and operated by HKSCC
“CIS Disclosure Document”	the same meaning as in Chapter 20
“CIS Operator”	the entity which operates or manages the CIS
“CIS” or “Collective Investment Scheme”	the same meaning as in Part I of Schedule 1 to the Securities and Futures Ordinance and includes unit trusts, mutual funds, investment companies and any form of collective investment arrangement
“chief executive”	a person who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of a listed issuer
“Code on Share Repurchases”	the Code on Share Repurchases approved by the Commission as amended from time to time
“Commission”	the Securities and Futures Commission established under section 3 of the Securities and Futures Commission Ordinance and continuing in existence under section 3 of the Securities and Futures Ordinance
“company”	a body corporate wherever incorporated or otherwise established

WRITTEN ANSWER — Continued**Definition of connected person**

14A.11 Rule 1.01 contains a general definition of “connected person”. In this Chapter, the definition of “connected person” includes:

- (1) a director, chief executive or substantial shareholder of the listed issuer;
- (2) any person who was a director of the listed issuer within the preceding 12 months;
- (3) a promoter or supervisor of a PRC issuer;
- (4) any associate of a person referred to in rules 14A.11(1), (2) or (3). The definitions of “associate” (in the context of non-PRC issuers and PRC issuers) are contained in rules 1.01 and 19A.04, respectively. In this Chapter, an “associate” of a person referred to in rules 14A.11(1), (2) or (3) includes the following additional persons:
 - (a) any person or entity with whom a person referred to in rules 14A.11(1), (2) or (3) has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, with respect to the transaction which is such that, in the opinion of the Exchange, that person or entity should be considered a connected person;
 - (b) any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of, a person referred to in rules 14A.11(1), (2) or (3); and
 - (c) a father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a person referred to in rules 14A.11(1), (2) or (3) whose association with the person referred to in rules 14A.11(1), (2) or (3) is such that, in the opinion of the Exchange, the proposed transaction should be subject to the requirements of this Chapter. Listed issuers must notify the Exchange of any proposed transaction with these parties unless the transaction is exempt under rules 14A.31 or 14A.33. Listed issuers must also provide information to the Exchange to demonstrate whether or not these parties should be regarded as associates of the person referred to in rules 14A.11(1), (2) or (3);

Note: A company which is an “associate” of a person referred to in rules 14A.11(1), (2) or (3) only because that person has an indirect interest in the company through its shareholding in the listed issuer is not a connected person.

- (5) any non wholly-owned subsidiary of the listed issuer where any connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary; and

WRITTEN ANSWER — Continued

Notes: 1 *It follows that a non wholly-owned subsidiary is not a connected person where:*

(a) *no connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary; and*

(b) *the non wholly-owned subsidiary is not an associate of a person referred to in rules 14A.11(1), (2) or (3).*

2 *An interest of a connected person of the listed issuer (other than at the level of its subsidiaries) in the subsidiary which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

(6) any subsidiary of a non wholly-owned subsidiary referred to in rule 14A.11(5).

14A.12 The definition of “connected person” in rule 14A.11 does not include any wholly-owned subsidiaries of the company whose securities are listed on the Exchange, whether directly or indirectly held.

Definition of connected transaction

14A.13 A connected transaction is:

(1) (a) any transaction between a listed issuer and a connected person; or

Acquisition or disposal of interest in a company

(b) (i) any transaction between a listed issuer and a person who is not a connected person and the transaction involves the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder of that company is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller. The Exchange may aggregate the interests of any person and his associates (as defined in rule 14A.11(4)) in determining whether together they are a “substantial shareholder” of any company. Where assets (as opposed to businesses) account for 90% or more of such a company’s net assets or total assets, the Exchange will treat the acquisition or disposal of such assets as a connected transaction and an acquisition or disposal of an interest in that company; or

WRITTEN ANSWER — *Continued*

Annex B

Extracts from the Takeovers Code

DEFINITIONS

Acquisition of voting rights: Acquisition of voting rights includes the exercise of control or direction over voting rights other than by way of a revocable proxy given for no or nominal consideration for the purpose of one meeting of shareholders only.

Acting in concert: Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate to obtain or consolidate “control” (as defined below) of a company through the acquisition by any of them of voting rights of the company.

Without prejudice to the general application of this definition, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established:—

- (1) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;
- (2) a company with any directors (together with their close relatives, related trusts and companies controlled[#] by any of the directors, their close relatives or related trusts) of it or of its parent;
- (3) a company with any of its pension funds, provident funds and employee share schemes;

Note: Class (3) does not apply to an employee benefit trust. The Executive will apply Note 20 to Rule 26.1 to determine whether the directors and shareholders of a company are acting in concert with the trustees of an employee benefit trust of the same company.

- (4) a fund manager (including an exempt fund manager) with any investment company, mutual fund, unit trust or other person, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;

WRITTEN ANSWER — Continued**DEFINITIONS**

- (5) a financial or other professional adviser (including a stockbroker)* with its client in respect of the shareholdings of the adviser and persons controlling[#], controlled by or under the same control as the adviser (except in the capacity of an exempt principal trader);
- (6) directors of a company (together with their close relatives, related trusts and companies controlled[#] by such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent;
- (7) partners;
- (8) an individual (including any person who is accustomed to act in accordance with the instructions of the individual) with his close relatives, related trusts and companies controlled[#] by him, his close relatives or related trusts; and
- (9) a person, other than an authorised institution within the meaning of the Banking Ordinance (Cap. 155) lending money in the ordinary course of business, providing finance or financial assistance (directly or indirectly) to any person (or a person acting in concert with such a person) in connection with an acquisition of voting rights (including any direct or indirect refinancing of the funding of the acquisition).

[#] See Note 1 at the end of the definitions.

* See Note 2 at the end of the definitions.

Notes to the definition of acting in concert:

1. *Classes (1) and (8)*

If an individual owns or controls 20% or more of the voting rights of a company in class (1), he and one or more other persons falling within class (8) will be presumed to be acting in concert with one or more persons in class (1) unless the contrary is established.

WRITTEN ANSWER — Continued**DEFINITIONS**2. *Full information required*

In cases where the question of whether parties are acting in concert is being investigated, relevant parties will be required to disclose all relevant information including their dealings in the relevant securities of the offeree company or potential offeree company. Failure to do so may result either in disciplinary proceedings or in an inference being drawn that they are acting in concert.

3. *Break up of concert parties*

When a ruling or admission has been made that a group of persons is or has been acting in concert, it will be necessary for clear evidence to be presented before it can be accepted that they are no longer acting in concert.

4. *Consortium offers*

Investors in a consortium formed for the purpose of making an offer (e.g. through a vehicle company) will normally be treated as acting in concert with the offeror. Where such an investor is part of a larger organisation, the Executive should be consulted to establish which other parts of the organisation will also be regarded as acting in concert. (See also the definitions of connected fund manager and connected principal trader and Rule 21.6 regarding discretionary fund managers.)

5. *Irrevocable undertakings and warranties*

Where a shareholder gives an irrevocable undertaking to an offeror to accept his offer (or, in the case of a scheme of arrangement, to vote in favour of the relevant resolution to approve such scheme of arrangement) and/or provides warranties to an offeror in relation to the offeree company, the giving of the irrevocable undertaking and/or the warranties will not, of itself and in the absence of any other factor, lead to the presumption that the shareholder is acting in concert with that offeror.

WRITTEN ANSWER — Continued**DEFINITIONS**6. *Standstill agreements*

Agreements between a company, or the directors of a company, and a shareholder which restrict the shareholder or the directors from either offering for, or accepting an offer for, the shares of the company or from increasing or reducing shareholdings, may be relevant for the purpose of this definition. In cases of doubt, the Executive should be consulted. (See Rule 33.2.)

7. *Class (6) – whitewashes*

For the purposes of class (6), an offer includes a transaction which is to be the subject of a whitewash application.

8. *Close relatives*

For the purposes of classes (2), (6) and (8) “close relatives” shall mean a person’s spouse, de facto spouse, children, parents and siblings.

9. *Underwriting arrangements*

The relationship between an underwriter (or sub-underwriter) of a cash alternative offer and an offeror may be relevant for the purpose of this definition. Underwriting arrangements on arms’ length commercial terms would not normally amount to an agreement or understanding within the meaning of acting in concert. The Executive recognises that such underwriting arrangements may involve special terms determined by the circumstances, such as weighting of commissions by reference to the outcome of the offer. However, in some cases, features of underwriting arrangements, for example the proportion of the ultimate total liability assumed by an underwriter, the commission structure or the degree of involvement of the underwriter with the offeror in connection with the offer, may be such as to lead the Executive to conclude that a sufficient level of understanding has been created between the offeror and the underwriter to amount to an agreement or understanding within the meaning of acting in concert. In cases of doubt, the Executive should be consulted.

WRITTEN ANSWER — Continued**DEFINITIONS**

A purchaser may be prepared to acquire part only of a holding, particularly where he wishes to acquire under 30%, thereby avoiding an obligation under Rule 26 to make a general offer. The Executive will be particularly concerned in such cases to see that underwriting arrangements made by a vendor do not amount to an agreement or understanding with the purchaser within the meaning of acting in concert.

10. *Transfer of voting rights as a gift or at nominal consideration*

In cases where a person transfers voting rights, in whole or in part, to another person, as a gift or for nominal consideration, the transferor and transferee will be presumed to be acting in concert under class (9). Class (9) does not normally apply to a charitable body exempt under the Inland Revenue Ordinance (Cap. 112). The Executive should be consulted in the case of charitable bodies established under overseas jurisdictions.

Associate: It is not practicable to define associate in terms which would cover all the different relationships which may exist in an offer. The term associate will cover all persons acting in concert with an offeror. It is also intended to apply to a wider range of persons (who may not be acting in concert) and will cover all persons who directly or indirectly own or deal in the relevant securities of an offeror or the offeree company in an offer and who have (in addition to their normal interests as shareholders) an interest or potential interest, whether commercial, financial or personal, in the outcome of the offer.

Without prejudice to the generality of the foregoing, the term associate normally includes the following:—

- (1) an offeror's or the offeree company's parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies;
- (2) any bank and financial and other professional adviser (including a stockbroker)* to an offeror, the offeree company or any company in class (1), including persons controlling[#], controlled by or under

WRITTEN ANSWER — Continued**DEFINITIONS**

- the same control as such banks, financial and other professional advisers;
- (3) the directors (together with their close relatives**, related trusts and companies controlled# by any of the directors, their close relatives or related trusts) of an offeror, the offeree company or any company in class (1);
- (4) the pension funds, provident funds and employee share schemes of an offeror, the offeree company or any company in class (1);
- (5) any investment company, unit trust or other person whose investments an associate manages on a discretionary basis, in respect of the relevant investment accounts;
- (6) a person who owns or controls 5% or more of any class of relevant securities (as defined in paragraphs (a) to (d) in Note 4 to Rule 22) issued by an offeror or the offeree company, including a person who as a result of any transaction owns or controls 5% or more. When two or more persons act pursuant to an agreement or understanding (formal or informal) to acquire or control such securities, they will be deemed to be a single person for the purpose of this paragraph. Such securities managed on a discretionary basis by an investment management group will, unless otherwise agreed by the Executive, also be deemed to be those of a single person (see Rule 22.3); and
- (7) a company having a material trading arrangement with an offeror or the offeree company.

See Note 1 at the end of the definitions.

* See Note 2 at the end of the definitions.

** See Note 8 to the definition of acting in concert.

Associated company: A company shall be deemed to be an associated company of another company if one of them owns or controls 20% or more of the voting rights of the other or if both are associated companies of the same company.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Mr WONG Ting-kwong's supplementary question to Question 2**

Over the past two years, the Town Planning Board (TPB) considered a total of 240 planning applications for changing uses of factory buildings. Among these applications, 181 were approved, 39 rejected and 20 deferred for consideration.

The main reason for rejecting the 39 applications was that the developments applied for were incompatible with the planning intentions of the zones concerned. Other reasons included failure to meet the requirements in respect of fire safety, building design and the provision of loading/unloading bays; the scale of development being too large which might adversely affected the surrounding environment, and so on.

During the same period, the Lands Department received a total of 328 applications for changing the use of factory building units/sites. Among these applications, 176 were approved, 36 rejected, with the remaining under processing. The main reason for rejecting the applications was that they were not supported by the TPB or other departments (such as the Fire Services Department, the Planning Department, the Buildings Department). Other reasons included failure to meet the existing policy requirements; failure to provide the District Lands Offices with sufficient information; withdrawal of the applications by the applicants; or failure on the part of the applicant to pay the administrative fees, and so on.

Appendix IV

WRITTEN ANSWER**Written answer by the Secretary for Health, Welfare and Food to Dr Joseph LEE's supplementary question to Question 5**

As regards information relating to the number of patients being prescribed different drugs after implementation of the Drug Formulary, according to the Hospital Authority (HA), patients will be prescribed different drugs by doctors for many reasons, which include changed clinical condition of the patient and the existence of new alternative drugs, and so on. Therefore, the HA does not keep statistics on such information.

WRITTEN ANSWER**Written answer by the Secretary for Health, Welfare and Food to Mr LEE Cheuk-yan's supplementary question to Question 5**

As regards the assessment criteria and mechanism of the Samaritan Fund (the Fund), when a patient applies for assistance from the Fund, the Medical Social Worker will first ensure that the patient fulfils the clinical requirement and is an "eligible person". If the patient is not a recipient of the Comprehensive Social Security Assistance, financial assessment will be conducted to determine whether the application should be accepted, and the level of subsidy to be provided by the Fund.

For application for assistance related to drug expenses, financial assessment would be conducted based on the patient's household Disposable Financial Resources (DFR). DFR means the total amount of patient's household disposable income and disposable capital. Patient's household disposable income refers to the gross income of the patient and the family members living in the same household, less allowable deductions which include basic expenditure on rent, mortgage payment, living expenses, provident fund contributions, medical expenses, and so on. As for patient's disposable capital, it includes cash, savings, investment and properties, and so on, owned by patients' household. The property in which the patient's household resided and the tools of trade of the patient's household are excluded from calculation. The adoption of the concept of DFR is to ensure that the patients' quality of life would be maintained largely even if they have to purchase the more costly drugs.

In line with the targeted subsidy principle, patients will be required to contribute to the cost of the drugs from their DFR. The level of their contributions will be calculated according to a sliding scale (attached at Annex), based on their DFR and the annual estimated drug cost. For example, patients with annual DFR between \$20,001 and \$40,000 would be required to make a maximum contribution of \$1,000. The contribution rate is capped at 30% for patients with DFR of \$260,001 and above. The level of subsidy provided by the Fund will be the annual estimated drug cost less the contribution from the patient. If the annual estimated drug cost is below the contribution required from the patient, no assistance from the Fund will be granted.

WRITTEN ANSWER — *Continued*

Annex

Sliding Scale

(A) <i>Annual Disposable Financial Resources (\$)</i>	(B) <i>Contribution Ratio (%)</i>	(C) <i>Maximum Annual Contribution from Patient (\$)</i> ($C = A \times B$)	(D) <i>Annual Disposable Financial Resources after deducting Annual Contribution (\$)</i> ($D = A - C$)
0 - 20,000	-	0	0 - 20,000
20,001 - 40,000	-	1,000	19,001 - 39,000
40,001 - 60,000 [#]	-	2,000	38,001 - 58,000
60,001 - 80,000	5	3,000 - 4,000	57,000 - 76,000
80,001 - 100,000	7.5	6,000 - 7,500	74,001 - 92,500
100,001 - 120,000	10	10,000 - 12,000	90,001 - 108,000
120,001 - 140,000	12.5	15,000 - 17,500	105,001 - 122,500
140,001 - 160,000	15	21,000 - 24,000	119,001 - 136,000
160,001 - 180,000	17.5	28,000 - 31,500	132,001 - 148,500
180,001 - 200,000	20	36,000 - 40,000	144,001 - 160,000
200,001 - 220,000	22.5	45,000 - 49,500	155,001 - 170,500
220,001 - 240,000	25	55,000 - 60,000	165,001 - 180,000
240,001 - 260,000	27.5	66,000 - 71,500	174,001 - 188,500
260,001 - 280,000	30 [*]	78,000 - 84,000	182,001 - 196,000
280,001 - 380,000	30 [*]	84,000 - 114,000	196,001 - 266,000
380,001 - 480,000	30 [*]	114,000 - 144,000	266,001 - 336,000
480,001 - 580,000	30 [*]	144,000 - 174,000	336,001 - 406,000
580,001 - 680,000	30 [*]	174,000 - 204,000	406,001 - 476,000
680,001 - 780,000	30 [*]	204,000 - 234,000	476,001 - 546,000
780,001 - 880,000	30 [*]	234,000 - 264,000	546,001 - 616,000
880,001 - 980,000	30 [*]	264,000 - 294,000	616,001 - 686,000
980,001 - 1,080,000	30 [*]	294,000 - 324,000	686,001 - 756,000
> 1,080,001	30 [*]	as calculated	

[#] For the patients whose annual disposable financial resources are under \$60,000, their annual contribution is fixed, and so the formula of calculating the applicant's annual contribution (annual disposable financial resources X contribution ratio) does not apply to them.

^{*} Capped at a flat contribution ratio of 30%